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DIGEST OF CASES

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ACQUISITION OF LAND :—

Arbitration—Costs—Lump Sum—Discretion of Arbitrator—Acquisition of Land (Assessment of Compensation) Act, 1919, *s.* 5.—By s. 5 (4) of the Acquisition of Land (Assessment of Compensation) Act, 1919, the costs of an arbitration under the Act shall be in the discretion of the official arbitrator, who may direct in what manner those costs shall be paid.

Held, that it was open to the arbitrator to award a lump sum for costs, although he did not know the actual amount of the costs.—BRADSHAW *v.* AIR COUNCIL, *Romer, J.*, 367; 1926, Ch. 329.

And see Arbitration, Compulsory Purchase.

ADMINISTRATION :—

1. *Insufficient Estate—Proof of Insolvency—Onus of Proof—Question of Fact—Annuity—Right of Annuitant to Value her Annuity for the Purpose of proving whether the Estate be Solvent or not—Judicature Act*, 1875, 38 & 39 *Vict. c.* 77, *s.* 10—*Rules of Supreme Court*, 1883, *Ord. LV. r.* 5 *A* (*a*)—*Administration of Estates Act*, 1925, 15 *Geo.* 5, *c.* 23, *s.* 34—*Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 30 (4).—An originating summons for administration to which no beneficiary is made respondent is irregular, having regard to Ord. 55, r. 5 A (*a*). An annuitant on whom is cast the onus of satisfying the court that an estate is insolvent for the purpose of having it administered under the rules of bankruptcy by reason of s. 10 of the Judicature Act, 1875, is entitled for the purpose of testing the solvency or insolvency of the estate to have her annuity valued and treat the capital amount as a debt against the estate.

In re Milan Tramways Company, 1884, 25 Ch. D. 587, applied.

Provided that such annuitant can come in and prove as a creditor in proceedings instituted by the legal personal representatives.

In re Hargreaves, 1890, 44 Ch. D. 236, applied.—*Re* PINK, *Clauson, J.*, 1090.

2. *Limited Administration—Grant to* cestui que trust *of Trust Estate—Supreme Court of Judicature (Consolidation) Act*, 1925, 15 & 16 *Geo.* 5, *c.* 49, *s.* 155 (1)—*Law of Property Act*, 1925, 15 & 16 *Geo.* 5, *c.* 20, 1*st Sched., Pt. II, para.* 6 (*c*) *and para.* 8—*Settled Land Act*, 1925, 15 & 16 *Geo.* 5, *c.* 18, *ss.* 2, 3 *and* 19—*Administration of Estates Act*, 1925, 15 *and* 16 *Geo.* 5, *c.* 23, 1 (1) *and* 31 (1).—Where a testator dying in 1897 appointed his wife A, sole executrix and devised to her for life all his real estate with remainder to B in fee simple absolutely, and A died in February, 1926, intestate and a widow leaving no statutory next-of-kin and no trustees for the purposes of the Settled Land Act, 1925, were ever appointed, B was held entitled under s. 155 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, to a grant of limited administration in respect of such real estate.—*Re* DALLEY, *P.D.*, 839.

3. *Tenant for Life—Remainderman—Wasting Property—Leaseholds—Trust for Sale—Power to Postpone—Law of Property Act*, 1925 (15 *Geo.* 5, *c.* 20), *s.* 28, *s-ss.* (2), (5), *and s.* 205, *s-s.* (1) (*ix*).—Having regard to s. 28, s-ss. (2) and (5), and 205, s-s. (1) (ix) of the Law of Propery Act, 1925, the principle of *Howe* v. *Lord Dartmouth*, 1802, 7 Ves. 137*a*, is no longer applicable to cases of leaseholds settled on trust for sale.—*Re* BROOKER, *Lawrence, J.*, 526.

ANIMALS :—

Domitæ Naturæ—*Cat—Cat taking Pigeons—Liability of Owner of Cat—Proof of* Scienter *Necessary.*—The plaintiff, who kept pigeons and poultry, discovered that a cat belonging to the defendant had taken and killed some of these pigeons. The defendant thereupon had the cat destroyed, but refused to compensate the plaintiff, who brought an action for damages in the county court. The action was dismissed. The Divisional Court, on appeal, held that as a cat was an animal *domitæ naturæ*, it was necessary to prove *scienter* before its owner could be held liable for an unprovoked trespass, and that as the appellant had not done this the respondent was not liable.

Held, by the Court of Appeal, that no distinction could be drawn between a cat and a dog in the matter of the liability of the owner for damage. The owner was not liable in this case.

Decision of the Divisional Court (70 SOL. J., 284) affirmed.—BUCKLE *v.* HOLMES, *C.A.*, 464; 1926, 2 K.B., 125.

ANNUITY :—

Will—Payment "without any Deductions free from Income Tax"—Super-tax—Finance (1909-10) *Act*, 1910, 10 *Ed.* 7, *c.* 8, *s.* 66.—A direction for an annuity "to be paid without any deduction by equal quarterly payments free from income tax" is a direction to pay free from super-tax.

In re Doxat, 1920, W.L. 262, followed.

In re Crawshay, 1915, W.L. 412, distinguished.

In re Bowring, 1918, W.L. 265, applied.—*Re* BOWEN; PADDOCK *v.* BOWEN, *Lawrence, J.*, 44.

APPOINTMENT :—

General Power—Sum appointed by Will—Covenant by Appointor in Marriage Settlement of Appointee to pay similar Amount to Trustees of Settlement—Ademption—Mother and Child—Person in loco parentis—*Double Portions.*—No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself in *loco parentis* towards them, and evidence that such is the case must be forthcoming.

In re Ashton, 1897, 2 Ch. 574, applied.

Where a testatrix exercised a general power of appointment by will in favour of her daughter, and subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof and later by codicil recited the appointment of a certain sum by the will.

Held, that the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, and that the codicil was not inconsistent with such a view.

In re Eardley's Will, 1920, 1 Ch. 297, followed.—*Re* WARE, *Re* ROUSE, *Romer, J.*, 691.

ARBITRATION :—

1. *Compulsory Purchase—Appointment of Arbitrator by Reference Committee—Validity—Acquisition of Land (Assessment of Compensation) Act*, 1919, *ss.* 1, 3.—A reference committee constituted under the Acquisition of Land (Assessment of Compensation) Act, 1919, has power by notice to revoke the appointment of an arbitrator and to appoint a new one in his place.—GROSS SHERWOOD & HEALD *v.* ESSEX C.C., *Eve, J.*, 1196.

2. *Agreement to Refer Questions as to Construction of Building Contract—Staying Legal Proceedings for Construction—Questions of Law—Arbitration Act*, 1889, 52 & 53 *Vict.*, *c.* 49, *ss.* 4, 19.—Where an originating summons had been taken out for construction of an agreement which contained an arbitration clause and a motion had been launched to stay the proceedings on the summons pursuant to s. 4 of the Arbitration Act, 1889, on the ground that the contract was a business contract involving evidence as to the practice and custom in the engineering industry, the court refused the motion in the exercise of its discretion on the ground that at present there was no dispute as to the facts, and it was more convenient to ascertain any facts necessary for the purpose of determining the question of construction on the originating summons than to stay the proceedings on the summons in order to have the facts which might never be in dispute found by the arbitrator.

Bristol Corporation v. *John Aird & Co.*, 1913, A.C. 241, distinguished.—METROPOLITAN TUNNEL AND PUBLIC WORKS CO. *v.* LONDON ELECTRIC RAILWAY, *Lawrence, J.*, 387.

And see CROWN.

BANKER :—

Cheque—Post-dated—Countermand—Payment by Bank—Negligence.—The plaintiff drew a post-dated cheque and shortly afterwards countermanded it. Subsequently, the bank cashed a cheque payable to the same person and for the same amount, but bearing a different date and number. In an action for negligence in paying the cheque,

Held, that the bank was not liable.—WESTMINSTER BANK *v.* HILTON, *H.L.*, 1196.

BANKRUPTCY :—

1. *Contract of Sale—C.I.F.—Specific Goods—One Moiety about to be Shipped—Purchase Money—Payment of—Subsequent Bankruptcy of Vendor—Moiety not Appropriated—Specific Performance against Trustee—Sale of Goods Act*, 1893, 56 & 57 *Vict. c.* 71, *ss.* 52 *and* 62.—The sale of 500 tons part of a parcel of 1,000 tons of Western White Wheat ex motor vessel "Challenger," although not specifically appropriated so as to pass the legal property therein is nevertheless a sale of specific or ascertained goods within the meaning of s. 52 of the Sale of Goods Act, 1893, and the court in its discretion directed specific performance of such a sale against the trustee in bankruptcy of the vendor.

Pearce v. *Bastable's Trustees*, 1901, 2 Ch. 122, followed.—*Re* WAIT, *Bkcy.*, 1002.

2. *Execution for More than £20—Debt paid to avoid Sale—Notice of Bankruptcy Petition within Fourteen Days—Receiving Order made on a subsequent Petition—Notice of later Petition given after Fourteen Days—Trustee's Right to claim Money—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 41 (2).—Section 41 (2) of the Bankruptcy Act, 1914, enacts: "Where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall . . . retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to . . . the trustee, who shall be entitled to retain it as against the execution creditor." This means that the sheriff after notice, within fourteen days of a petition, must hold the money to see whether a receiving order will be made; and upon the making of such an order he will be liable to pay the sum to the trustee, although the receiving order was made, not upon the original petition, but upon a subsequent petition, notice of which was not given to the sheriff within the fourteen days' limit.

Opinion of Vaughan Williams, J., to the contrary in *Watkins* v. *Barnard*, 46 W.R. 156; 1897, 2 Q.B. 521, doubted.—LATTER *v.* JUCKES, *C.A.*, 905.

3. *Infants—Traders—Filing Own Petition—Receiving Order—Adjudication—Invalidity—Official Receiver—Application by—Rescission and Annulment—Costs.*—Infants cannot now be made bankrupt even on their own petition except under special circumstances, such as incurring debts for necessaries or making representations that they are of full age.

Ex parte Kibble, 1875, L.R. 10 Ch. 373, followed.

In re Smedley, 1864, 10 L.T. 432, distinguished.—*Re* A. AND M. DEBTORS, *Bkcy.*, 607.

4. *Judgment Debt—Bankruptcy Notice thereon—Act of Bankruptcy—Second Bankruptcy Notice issued and served—Refusal to comply with—Validity of Notice—Receiving Order made on second Notice—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *ss.* 1 (*g*), 2, 4.—Where a bankruptcy notice has been issued and served, but not complied with, and the creditor, before the expiration of three months, issues and serves a second bankruptcy notice, on the ground that he believes the first may be disputed and be invalid, he is not precluded from doing so, and the notice is valid. The debtor cannot refuse to comply with a second bankruptcy notice on the ground that he has committed an act of bankruptcy under the first, and so put it out of his power to make any payment under the second notice.

Ponsford Baker & Co. v. *Union of London & Smith's Bank*, 1906, 2 Ch. 444, distinguished.—*Re* DEBTORS (No. 771 OF 1926), *C.A.*, 1089.

5. *Practice—Action Commenced—Subsequent Receiving Order against Defendant—Motion in Default of Defence—Judgment on—Drawing up of Judgment Postponed Pending Notice thereof to Official Receiver—Bankruptcy Act*, 1914 (4 & 5 *Geo.* 5, *c.* 59), *s.* 7.—When after action brought a receiving order in bankruptcy is made against the defendant on a motion for judgment on minutes in default of defence, the court made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the Official Receiver in Bankruptcy, who was to be at liberty to apply to the court with regard thereto if he should think fit.—HATTON *v.* DENISON, *Lawrence, J.*, 565.

6. *Receiving Order—After-acquired Property—Assistant Official Receiver—Sanction by to Bankrupt Arranging Boxing Match and Receiving Takings after Receiving Order—Binding on Trustee—Right of Trustee to Recover Proceeds of Sale of Tickets from Bankrupt's Agents—Claim Benefit, but Repudiate Burden—Equity—Bankruptcy Act*, 1914 (4 & 5 *Geo.* 5, *c.* 59), *ss.* 37, 38, 45, 46, 47, 74—*Bankruptcy Rules*, 1915, *r.* 316.—A trustee in bankruptcy subsequently appointed has no right to recover from the bankrupt's agents proceeds of sale of tickets for a boxing match which had been paid to the bankrupt by such agents where the Assistant Official Receiver had, after the receiving order had been made, sanctioned the bankrupt staging the boxing match and receiving the takings, even if the trustee was not bound by the acts of the Assistant Official Receiver, and even if the Official Receiver had exceeded his powers, because it would be inequitable and unjust to compel the bankrupt's agents, who had acted under the sanction of the Official Receiver, to pay the moneys claimed for the benefit of the creditors in the bankruptcy.

Ex parte James, 1874, L.R. 9, Ch. 609, inapplicable. *Ex parte Whittaker*, 1875, L.R. 10, Ch. 446, distinguishable.—*Re* WILSON; *Ex parte* THE TRUSTEE, *Lawrence, J.*, 65.

7. *Reputed Ownership—Bill of Sale—Bill of Sale Holder Taking Possession of Chattels before Receiving Order—Protected Transaction—Available Act of Bankruptcy—Notice of—Service of Bankruptcy Notice—Notice of—Statement of Intention to take Proceedings in Bankruptcy—Schedule of Chattels—Specific Description—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 38 (*c*), *and s.* 45—*Bills of Sale Act*, 1882, 45 & 46 *Vict. c.* 43, *s.* 4.—The mere fact that a person knows that a bankruptcy notice has been served is not notice of an available act of bankruptcy.

Lucas v. *Dicker*, 1880, 5 C.P.D. 150, distinguished.

Horses described in the schedule to a bill of sale by name and colour are sufficiently specifically described to satisfy s. 4 of the Bills of Sale (1878) Amendment Act, 1882, but not store cattle merely described as steers or heifers.

Carpenter v. *Deen*, 1889, 23 Q.B.D. 566, applied.—HERBERT'S TRUSTEES *v.* HIGGINS, *Bkcy.* 708; 1926, 1 Ch. 794.

8. *Reputed Ownership—Debt due in course of Business when Bankruptcy supervened—Charged with Judgment Debt—Assignment for Value of Judgment Debt and another Business Debt—Agreement to Accept Payment by Instalments—Also Promissory Notes to be Deposited—Transaction for Valuable Consideration by Bankrupt before Receiving Order—Bankruptcy Act*, 1914 (4 & 5 *Geo.* 5, *c.* 59), *ss.* 38 (*c*) *and* 45.—The nature of a debt due to a bankrupt in the course of his business which forms part of the property divisible among his creditors is not changed by a judgment being obtained in respect of it.

Where promissory notes were given payable over a period in substitution for a partly assigned debt the deposit by the bankrupt of the promissory notes was held to be a transaction for valuable consideration within s. 45 (*d*) of the Bankruptcy Act, 1914, as an agreement should be inferred therefrom to postpone enforcing the debt owing by the bankrupt at the time of the deposit of the notes which constituted sufficient consideration.

Wigan v. *English and Scottish Law Life Assurance Association*, 1909, 2 Ch. 291, applied.—*Re* WETHERED, *Ex parte* SALAMAN, *Lawrence, J.*, 324; 1926, 1 Ch. 167.

9. *Settlement—General Power—Exercise of—Appointor's Subsequent Bankruptcy—Appointment—Void against Trustee—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 38, *s.* 42, *s-ss.* (1) *and* (4), *s.* 167.—A voluntary gift or settlement of property in exercise of a general power is a settlement of property within s. 42 of the Bankruptcy Act, 1914.

Ex parte Gilchrist, 1886, 17 Q.B.D. 521, and *In re Guedalla*, 1905, 2 Ch. 331, distinguished.—*Re* MATHIESON, *Astbury, J.*, 1161; 1927, 1 Ch. 283.

10. *Settlement—Property coming to Settlor "In Right of his Wife"—Wife's Intestacy—Settlement on Child—Bankruptcy of Settlor—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 42.—Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to s. 42 of the Bankruptcy Act, 1914.

Cooper v. *Macdonald*, 1877, 7 Ch. D. 288, applied.—*Re* BOWER WILLIAMS, *Astbury, J.*, 1221.

BREACH OF PROMISE.—See Contract.

BRIDGE :—

1. *Local Government—Carrying Highway over River—Liability to Repair—Urban Authority—"Street"—Public Health Act*, 1875, 38 & 39 *Vict., c.* 55, *ss.* 4, 149 *and* 152.—Where an estate was laid out with streets and bridges over the New River and the streets became repairable by the inhabitants at large, it was held that such bridges were included in the definition of "street," and were accordingly repairable by the local authority.

Great Eastern Railway v. *Hackney District Board of Works*, 1883, 8 A.C. 687, distinguished.—ATT.-GEN. *v.* HORNSEY BOROUGH COUNCIL, *Romer, J.*, 1197.

2. *Railway—Damage by Steamroller—Liability of Persons having Charge of Steamroller—Highways and Locomotives Act*, 1861, 24 & 25 *Vict., c.* 70, *s.* 7.—The defendant corporation hired a steamroller and with it the services of a competent driver for the purpose of repairing a road which passed over a bridge across the plaintiff company's railway. In the course of the work of repairing the road, the parapet of the bridge was cracked, and the bridge was damaged, as the plaintiffs alleged, through the negligence of those in charge of the steamroller. The plaintiffs claimed to recover the sum of £321 4*s.* 10d., being the cost of partially reconstructing the bridge. Greer, J., held that the defendant corporation were solely liable to make good the damage as being the persons who had charge of the steamroller at the time when the damage was caused (within the meaning of s. 7 of the Highways and Locomotives Act, 1861), and that the other defendants (the owners of the steamroller) were not liable at all. His lordship assessed the damages at £10.

Held, that Greer, J., was right in holding that the defendant corporation was solely liable, but his judgment should be varied with regard to the amount of the damages by substituting for £10 the sum of £321 4s. 10d., the cost of the repairs.

Order of Greer, J., 70 SOL. J. 651, varied accordingly.—SOUTHERN RAILWAY CO. *v.* GOSPORT CO., *C.A.* 817.

BUSINESS NAME :—

Registration—Default in Compliance with Statute—Action by Defaulter of Contract—Application for Relief after Judgment—Relief Granted—Power of Court to Grant Relief Retrospectively—Registration of Business Names Act, 1916, 6 & 7 *Geo.* 5, *c.* 58, *s.* 8 (1) (*a*).—The power of the court under s. 8 of the Registration of Business Names Act, 1916, to grant relief from the disability imposed by the Act on a defaulter, of being unable to enforce his rights under a contract by legal proceedings, is retrospective and may be granted, on terms, not only in pending proceedings, but even after judgment, so as to validate such proceedings, *ab initio*.

Hawkins v. *Duché*, 1921, 3 K.B. 226, applied and extended.—*Re* SHAER, *C.A.* 775.

CARRIER :—

Carriage of Goods—Exception of Loss by Fire—Fire Caused by Negligence of Carriers' Servants—Liability of Carriers.—The plaintiff sued the defendants, who were bailees of the plaintiff's goods, for damages for the loss of those goods by fire while in the course of transit in the defendants' van. The jury found that the fire was caused by the negligence of the defendants' servants. Clause No. 3 of the contract between the parties excepted the defendants from liability for damage by fire. Clause No. 5 stated that the defendants would not in any circumstances be responsible for any article which exceeded £10 in value or for the contents of any package beyond the sum of £10.

Held, that the defendants, as bailees, were only liable for their own or their servants' negligence; that the fire occasioning the damage was caused by their servants' negligence; but that the defendants were not liable to the plaintiff inasmuch as the fire referred to in the exception clause could apply only to a fire which resulted from their or their servants' negligence.

Held, further, that in any event, the plaintiff under the first part of clause 5 could not recover the price of any article exceeding £10 in value, and under the second part, if a packet contained articles of more than £10 in value, not more than £10.

Turner v. *Civil Service Supply Association*, unreported, approved and followed.

Polemis v. *Furness, Withy and Co.*, 1921, 3 K.B. 560, distinguished.—FAGAN *v.* GREEN AND EDWARDS, *K.B.D.* 185; 1926, 1 K.B. 102.

CHEQUE.—See Banker, Gift, Mistake.

COMPANY :—

1. *Action by Debenture-holders—Insufficient Assets—Order of Administration of Assets—Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *ss.* 107 *and* 209.—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges and expenses of debenture trust deed including the trustees' remuneration, (4) plaintiffs' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY, *Tomlin, J.*, 857.

2. *Articles of Association—"Interested" Director—Resolution of Board—Issue of Debentures to Bank—Validity.*—A resolution by directors that debentures be issued to the bank as security for the overdraft of the company, which the directors had personally guaranteed is "a dealing in which the director is interested" within the meaning of the part of an article of association, which says: "No director shall vote as a director in regard to any contract, arrangement or dealing in which he is interested."—VICTORS, LTD. *v.* LINGARD, *Romer, J.*, 1197.

3. *Debentures—Floating Charge on Assets—Power in Trust Deed to Mortgage Specified Property in Ordinary Course of Business—Creation of Floating Charge over Business Assets in Priority to Earlier Debentures—Validity.*—A company issued debentures for £50,000, with a general floating charge over assets, but by clause 7 of the trust deed it was provided that the company should not create a priority charge over the assets except, as the company should think proper by the deposit of commercial documents of title, or upon materials or stock "for the purpose of raising money in the ordinary course of the business of the company." The company issued further debentures for £12,000, in priority to the £50,000, charging its commercial documents, materials, products and stock.

Held, that the £12,000 charge was entitled to priority, as being within the terms of clause 7. The case of *Re Benjamin Cope and Sons*; *Marshall* v. *The Company*, 58 SOL. J., 432, 1914, 1 Ch. 800, was distinguishable, for there the reservation of a power to issue second mortgages was in general terms, whereas in the present case it was precise and specific, and the power had been exercised over the assets indicated strictly in the course of, and for the purposes of, the company's buisness.—*Re* AUTOMATIC BOTTLE MAKERS, LTD., *C.A.*, 402; 1926, 1 Ch. 412.

4. *Mortgage—Income Tax deducted from Interest but not paid to Revenue—Liquidation of Company—Crown claiming as Preferential Creditor—Income Tax Act*, 1918, 8 & 9 *Geo.* 5, *c.* 40, *all schedules, rr. No.* 21 (1) (2)—*Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *s.* 209.—A company deducted income tax from the amounts paid as interest on its mortgage debt, but did not pay over the sums so deducted to the revenue authorities. Upon a voluntary winding up of the company:

Held, that the Crown was not a preferential creditor in the liquidation: the sums in question not being debts due to the Crown in priority within the scope of s. 209 of the Companies (Consolidation) Act, 1908.—*Re* LANG PROPELLER, LTD., *C.A.*, 836; 1927, 1 Ch. 120.

5. *Preference Shares—Option to Convert into Ordinary Shares—Notice—Exercise of Option—Voluntary Liquidation Pending Notice—Status—Alteration of—Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *ss.* 186, 205.—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares and some of them gave such notice less than six months before the company went into voluntary liquidation, such notice was held to be valid and effectual to convert their preference shares into ordinary shares, and did not create an alteration of their status after the commencement of the winding up, within s. 205.—*Re* BLAINA COLLIERY, *Romer, J.*, 404.

6. *Shareholder—Australian Income Tax—Dividend payable to British Shareholding Company—Deduction from—Contract—Locality—Validity of Deduction—Commonwealth of Australia Constitution Act*, 1900, 63 & 64 *Vict. c.* 12—*Income Tax Assessment Act*, 1915-1921 (*Australia*).—Where an English trust investment company held shares in another English company with registered offices in London, which latter company was not a trading company and paid no British income tax, but derived its revenue from shares which it held in four trading companies carrying on business exclusively in Australia, it was held that such shares were locally situated in England, and that the debt to which the declaration of dividend gave rise must also therefore be situated in England.

Spiller v. *Turner*, 1897, 1 Ch. 911, and *Indian Investment Trust* v. *Borax Consolidated Ltd.*, 1920, 1 K.B. 539, followed.

Such a debt is not property in respect of which the Commonwealth of Australia has power to impose taxation on the plaintiff company, and it is not property the incidence of the taxation on which can be altered by Australian Legislation.—LONDON AND SOUTH AMERICAN INVESTMENT TRUST *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., *Tomlin, J.*, 1024.

7. *Voluntary Winding-up—Scheme of Arrangement—Reduction and Re-organisation of Capital—Business—Resumption of—Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *ss.* 45, 46, 120, 144, 193.—A reduction, re-organisation and increase of capital with a view to continuing to carry on the business of a company, can be directed by the court, while the company is in voluntary liquidation, and all further proceedings in a voluntary winding-up stayed.—*Re* STEPHEN WALTERS & SONS, *Romer, J.*, 953.

8. *Winding-up—Debenture issued after Petition presented but before Winding-up Order—Validity of Debenture—Summons for Declaration of—Costs—Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *s.* 205, *s-s.* (2).—The fact that a person to whom a debenture was granted after a petition to wind the company up had been launched had knowledge of the launching of such petition does not prevent the court from validating that debenture, if it was given for money advanced by the debenture-holder for the purpose of *bona fide* assisting the company to pay wages, and the costs of the applicant to such an application to validate his debenture, notwithstanding s. 205 (2) of the Companies (Consolidation) Act, 1908, and of the liquidator, may be paid out of the assets of the company.

In re Wiltshire Iron Company, 1868, L.R. 3 Ch. 443, applied.—*Re* PARK WARD & CO., *Romer, J.*, 670; 1926, 1 Ch. 828.

9. *Winding-up—Debts provable—Mutual Debts and Credits—Life Insurance Policies—Mortgages of Policies to Company—Right to set off Statutory Value of Policies—Assignment of Mortgages to Trustees by Company—Companies (Consolidation) Act*, 1908, 8 *Edw.* 7, *c.* 69, *s.* 207—*Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *ss.* 30, 31.—In the winding-up of an insurance company, policy-holders who have mortgaged their policies to the company to secure advances are entitled to set off the full statutory value of their policies against the mortgage debts, under s. 31 of the Bankruptcy Act, 1914, where at the date of the petition for winding-up the company still held the mortgages. But, where the company has at that date sub-mortgaged the policies by assignment to trustees to secure a trust fund, there is no longer any mutual dealing, and no right of set-off exists.

Ex parte Price, L.R. 6 Ch. 698, not followed.

Paddy v. *Clutton*, 1920, 2 Ch. 554, overruled.—*Re* CITY LIFE INSURANCE CO., *C.A.*, 108; 1926, 1 Ch. 191.

COMPULSORY PURCHASE:—

Metropolis—Land—Compulsory Acquisition—Compensation for Resulting Injuries—Metropolitan Paving Act, 1817, 57 *Geo.* 3, *c.* xxix, *s.* 82.— A freeholder whose property has been compulsorily acquired for the purpose of a widening scheme is not entitled to compensation in respect of goodwill or improvements or for damage or injury, *e.g.*, by severance, the compensation for such matters being limited to leaseholders and tenants at will.—COURTAULDS, LTD. *v.* CITY OF LONDON CORP., *K.B.D.*, 1024; 1926, 2 K.B. 506.

And see Acquisition of Land.

CONFLICT OF LAWS:—

Debt — Assignment — Validity — Assignment between two Foreigners—Debt Payable in England.—An assignment of a debt, made payable on demand in this country, between two citizens of a foreign country who are domiciled there, is governed by the law of that country, and if it is invalid by the law of that country it will not be held valid in this country merely because it is in accordance with the requirements of English law.—REPUBLICA DE GUATEMALA *v.* NUNEZ, *K.B.D.*, 858.

CONTRACT:—

Breach of Promise—Promise Broken by Defendant—Engagement Ring—Plaintiff's right to retain Ring.—Where a man gives a woman an engagement ring in contemplation of a marriage taking place, and then, without a recognised legal justification, refuses to carry out his promise of marriage, he cannot demand the return of the ring.—COHEN *v.* SELLAR, *K.B.D.*, 505; 1926, 1 K.B. 536.

CONVEYANCE.—See Easement, Mortgage.

COPYRIGHT:—

1. *Dramatic Work—Author a Non-resident Alien—First Performance in this Country—Evidence—Entry at Stationers' Hall—Inaccuracy—Other Evidence—Admission by Author's Agent—Assignment of Performing Rights—Cinematograph Rights—Infringement by Exhibition—Copyright Act*, 1911, 1 & 2 *Geo.* 5, *c.* 46, *ss.* 1, 2, 24 *and Sched.* 1.—A non-resident alien can, under the Dramatic Copyright Act, 1833, acquire copyright in a dramatic work, provided that the dramatic work was first performed in this country. An entry on the register of first performances of dramatic works at Stationers' Hall is *prima facie* evidence of the fact of first performance and of the ownership of, and of the right of performance in this country of the dramatic work. But if the entry is incorrect, a certified copy thereof cannot be relied on as evidence of first performance, although the court may rely on the certificate as corroborative of other evidence, such as, *e.g.*, an admission by the agent of the author made shortly after the assignment of the performing rights to the plaintiff that the play was first performed in this country. Where the plaintiff, before the Copyright Act, 1911, possessed the sole right to perform or to authorise the performance of a dramatic work in this country, he, by virtue of ss. 1 and 24 and the 1st Sched. to the Copyright Act, 1911, acquired the sole right to perform the work in public, and his rights were infringed by the importation into this country and the exhibition in this country of a film of the play.

Decision of McCardie, J., 1926, 1 K.B. 393, affirmed.—FALCON *v.* FAMOUS PLAYERS FILM CO., *C.A.*, 756; 1926 1 K.B. 393.

2. *Musical Play—Infringement—Performance in Public—Performance in Club without Consent of Composer—Copyright Act*, 1911, 1 & 2 *Geo.* 5, *c.* 46, *ss.* 1, 2.—A musical number which was part of a musical play was performed without the consent of the composer, by a professional orchestra, at a dancing club to which 1,800 members and their guests had access, in the presence of about 180 persons. There was evidence that the performance was calculated to cause serious damage to the owners of the copyright.

Held, that on the facts the performance was a performance in public within the meaning of the Copyright Act, 1911, and was an infringement of the plaintiff's copyright.

Decision of Eve, J. (70 SOL. J., 858, 1926, Ch. 870) affirmed.—HARMS (INCORPORATED) LTD. *v.* EMBASSY CLUB, *C.A.*, 1219.

3. *Psychological Research—Automatic Writing by Medium—Infringement—Copyright Act*, 1911, *ss.* 1, 2.—A lady journalist engaged as a medium in psychical research claimed copyright in a production written by her in automatic writing and alleged to be communicated by a spiritual agent. The defendant was present at some of the *séances* and alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in anyone.

Held, that the plaintiff was the sole owner of the copyright.—CUMMINS *v.* BOND, *Eve, J.*, 1003.

CORONER:—

Inquest—Body not viewed—Inquisition Quashed—Proceedings Null and Void—Direction to hold an Inquest.—It is a condition precedent to the holding of an inquest that the coroner and jury view the body. Failure to comply with that condition renders the proceedings a nullity, and the court will order an inquest to be held.—REX *v.* HASLEWOOD, *K.B.D.*, 906; 1926, 2 K.B. 468.

CORPORATION PROFITS TAX:—

Mutual Insurance Co.—Surplus—Mutual Trading Concerns—Liability for Tax—Finance Act, 1920, 10 & 11 *Geo.* 5, *c.* 18, *s.* 53 (2).—An accumulated surplus comprising partly interest on investments and partly a credit balance, arising from mutual insurance transactions among members of a mutual insurance company, constitute in law profits liable to be assessed to corporation profits tax.

New York Life Assurance Co. v. *Styles*, 14 App. Cas. 381, explained.—CORNISH MUTUAL ASSURANCE CO. *v.* INLAND REVENUE COMMRS., *H.L.*, 343; 1926, A.C. 281.

COSTS:—

1. *Action—Claim for Commission—Several Items—Reference to Official Referee by Consent—Whether Separate Items involve Separate Issues—"Issue"—Discretion of Official Referee as to Costs—Rules of the Supreme Court, Ord. LXV, r.* 2.—The plaintiff brought an action against his former employers to recover the balance of an account for commission which he alleged he had earned while in their employ

as traveller. The action was brought in the High Court and the matter was eventually referred to an Official Referee by consent. The claim comprised more than twenty different items, and in regard to some of them the defendants set up different defences. The defendants had paid money into court, but in the result the official referee held that they were liable for a sum of £15 odd in excess of the amount paid into court. As to some of the items the defendants succeeded on different grounds. The defendants contended that each item was a separate issue and that they were entitled to costs on the items on which they succeeded. The official referee treated the action as one of general account, involving one issue only, and awarded the plaintiff costs on the High Court scale.

Held, (1) (affirming the Divisional Court on this point) that there were materials on which the official referee was justified in awarding the plaintiff costs on the High Court scale, and (2) (reversing the Divisional Court on this point) that one of the items on which the defendants succeeded was a separate issue and the defendants were entitled to the costs, if any, of that issue.

Order of the Divisional Court varied.—WILLIAMS *v.* STANLEY JONES & Co., *C.A.*, 463; 1926, 2 K.B. 37.

2. *Action in High Court—Judgment for Plaintiff with Costs—Damages to be Ascertained by Referee—Award of less than £100—Application to Judge—Award of Costs upon High Court Scale—Jurisdiction—County Courts Act*, 1919, 9 & 10 *Geo.* 5, *c.* 73, *s.* 11—*Rules of the Supreme Court, Ord.* 27, *r.* 6; *Ord.* 36, *r.* 57.—In an action in the High Court for wrongful dismissal, judgment was given for the plaintiff with costs, and it was ordered that the amount due to the plaintiff should be ascertained by a reference in chambers. A counter-claim by the defendants was dismissed with costs. The referee awarded the plaintiff £83, and upon application to the judge who tried the action, the latter ordered judgment to be entered for that amount, with costs upon the High Court scale. The Defendants appealed, contending that the judgment for the plaintiff with costs was final, and that, by s. 11 of the County Courts Act, 1919, as the plaintiff had recovered less than £100, he was only entitled to costs on the county court scale, and the judge had no jurisdiction to make the order as to costs at a subsequent application.

Held, that the order made at the trial was partly final and partly interlocutory. Until the amount of the damages was ascertained the operation of s. 11 of the Act of 1919 did not come into play, and when the damages were assessed it was open to the judge to consider the amount awarded, and make an order for the scale of costs as he might think proper.—LIGHT *v.* WEST & SONS, *C.A.* 404; 1926, 2 K.B. 238.

3. *Remission of Action to County Court—Costs of Proceedings in High Court—Jurisdiction of County Court Judge—Judicial Exercise of Discretion—County Courts Act*, 1888, 51 & 52 *Vict. c.* 43, *s.* 113—*County Courts Act*, 1919, 9 & 10 *Geo.* 5, *c.* 73, *ss.* 1, 11, 12, *and the provisos to ss.* 11 *and* 12.—Where an action is started in the High Court under Ord. XIV, and an order is made within twenty-one days of the issue of the writ that the sum admitted to be due by the defendant be paid within a certain time, and the claim for the balance is transferred to a county court, the costs of the whole action, both before and after transfer, are in the discretion of the county court judge, and such discretion must be exercised judicially.—JENKINS & Co. *v.* SIMON, *K.B.D.* 162; 1926, 1 K.B. 111.

COUNTY COURT:—

Taxation—Remitted Action—Scale of Taxation—Duty of County Court Judge to Specify Scale—County Courts Act, 1919, 9 & 10 *Geo.* 5, *c.* 73, *s.* 12—*County Court Rules, Ord. LIII, r.* 1.—The costs of a remitted action, both before and after transfer, are in the discretion of the county court judge. It is not necessary for that judge to make a special order before the registrar can tax the costs, but inasmuch as the registrar would, in the absence of any direction as to taxation, be compelled, under Ord. LIII, r. 1, to tax in accordance with the scale applicable to the amount recovered, it is wise for the county court judge, under the powers conferred by s. 12 of the County Courts Act, 1919, to name the scale under which taxation is to proceed.—GOLD BROS. AND NASH LTD. *v.* FULLER, *K.B.D.* 284.

And see Costs.

CRIMINAL LAW:—

Sentence—Imprisonment following Sentence of Two Years' Hard Labour—Validity.—There is no rule of law or of practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour.—REX *v.* MORRISS, *C.C.A.* 426.

CROWN:—

Arbitration—Proceedings Begun after Lapse of Six Years—Right of Crown to Rely on Statute of Limitations, 21 *Jac.* 1, *c.* 16.—In arbitration proceedings which have been commenced more than six years after the happening of the event which gave rise to those proceedings the Crown may rely on the Statute of Limitations, unless the contrary is provided for in the submission.—CAYZER IRVINE & Co. *v.* BOARD OF TRADE, *K.B.D.* 347.

DANGEROUS DRUGS:—

Morphine — Administration by Medical Practitioner—Question of Personal Supervision—Physical Presence not Essential—Dangerous Drugs Act, 1920, 10 & 11 *Geo.* 5, *c.* 46.—Where a dangerous drug, morphine, was prescribed daily by a qualified medical practitioner who had given instructions regulating the amount of the drug and its use, and had visited the patient every other day, it was held to have been done under his direct personal supervision, although he was not daily physically present.—KINGSBURY *v.* DIRECTOR OF PUBLIC PROSECUTIONS, *K.B.D.* 1182.

DETINUE:—

Action for Detinue—MSS. Plays Sent to Actor—Gratuitous Bailee.—If an author sent MSS. plays to an actor, he is a gratuitous bailee; but if the actor write acknowledging and promises to read the play, he is under liability for its safe custody (per His Honour Judge Scully).

Cf. *Coldman* v. *Hill*, 1919, 1 K.B. 443.—SUMMERS *v.* CHALLENOR, *C.C.* 760.

DIVORCE:—

Practice — Permanent Maintenance — Interim Order — Respondent Assigning His Property to Trustees before Order for Security—Application to Set Aside Assignment—Powers of the Court.—There is no power in the court to restrain the respondent in a divorce suit from assigning his property, even though the effect may be to prevent his giving security for maintenance, unless at the time the assignment was made an Order of the Court affecting the property assigned had actually been obtained. — JAGGER *v.* JAGGER, *C.A.* 503; 1926, P. 93.

And see Husband and Wife.

EASEMENT:—

1. *Ancient Lights—Obstruction—Quantum of Light to which Plaintiff Entitled—Standard in Different Districts.*—The standards of lighting required to survive in order to eliminate the existence of an actionable wrong is an absolute standard unaffected by the locality, and a man whose room in a manufacturing locality has been turned into a room no longer adequately lighted for ordinary purposes by reason of an obstruction to his light has suffered just the same actionable wrong as if his room was not in a manufacturing locality.—HORTON ESTATE, LTD. *v.* JAMES BEATTIE, LTD., *Russell, J.*, 917; 1927, 1 Ch. 75.

2. *Light—Prescription—Right to Build on Adjoining Land so as to Obstruct Light—"Consent or Agreement"—Prescription Act*, 1832, 2 & 3 *Wm.* 4, *c.* 71, *s.* 3.—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under s. 3 of the Prescription Act, 1832. *Haynes* v. *King*, 1893, 3 Ch. 439, followed.—FOSTER *v.* LYONS & Co., *Eve, J.*, 1182.

3. *Right of Way—Reference to Right in Habendum but not in Parcels—Plan showing right less than that enjoyed with Property at date of Conveyance—Ambiguity—No Contrary intention to Diminish right Enjoyed—Conveyancing Act*, 1881, 44 & 45 *Vict.*, *c.* 41, *s.* 6 (2), (4).—The conveyance of a house and garden was made together with a right of way to the back of the premises, expressed in somewhat indefinite terms, but referring to a plan showing only a footway four feet in width. The habendum was expressed to be subject to and with the benefit of all easements and privileges in the nature of easements then subsisting in respect of the property. At the date of the conveyance there was in existence a roadway, wide enough for vehicles to the back of the premises, approached by a double gate, and regularly used at intervals.

Held, that the easement of a right of way for vehicles passed to the purchaser by virtue of s. 6 (2) of the Conveyancing Act, 1881, the plan and the ambiguity of wording of the parcels not being a sufficient expression of a contrary intention within s. 6 (4).

The maxim "*expressio unius, exclusio alterius*" is not a rule of law, but a canon of construction to be applied with great caution.

Hansford v. *Jago*, 1921, 1 Ch. 322, applied.

Decision of Russell, J., 1926, Ch. 102, reversed.—GREGG *v.* RICHARDS, *C.A.*, 443; 1926, 1 Ch. 521.

ECCLESIASTICAL LAW:—

Prohibition, Writ of—Ecclesiastical Courts—Order of Consistory Court—Order made without Jurisdiction—Right of Appeal to Court of Arches—No Objection to Grant of Prohibition.—A writ of prohibition will issue directed to the Chancellor of a diocese prohibiting him from proceeding under an order made by him in the Consistory Court without jurisdiction, notwithstanding that there might be a right of appeal to the Court of Arches from such order.

Decision of the majority of the Divisional Court (Lord Hewart, C.J., and Avory, J.; Shearman, J., dissenting) reversed.—REX *v.* NORTH, *ex parte* OAKEY, *C.A.*, 1181.

EDUCATION:—

1. *Teachers in Elementary School—Married Woman Teacher—Right to Dismiss—Collateral or Alien Purposes—Bona Fides.*—Where one of two contracting parties is a statutory body the other party has a right to question the motives which actuate that statutory body in exercising its contractual rights, because it can only exercise its statutory rights for the purposes for which it is created. The other party must, however, prove that the statutory body is acting *ultra vires* or *mala fide* or corruptly or in pursuance of an illegitimate aim. Such proof is not forthcoming where an education authority acting on a humane policy of finding employment for single teachers dismisses certain married teachers who have other means of livelihood.

Short v. *Poole Corporation*, 70 SOL. J. 245, followed and applied.—FENNELL *v.* EAST HAM CORPORATION, *Lawrence, J.*, 324; 1926, 1 Ch. 641.

2. *Tenure of Teachers in Elementary Schools—Dismissal of Married Women Teachers—Validity—Discretion of Local Authority—Bona Fides—Education Act*, 1921 (11 & 12 *Geo.* 5, *c.* 51), *ss.* 17, 148 (1).—Where a local education authority has *bona fide* resolved on public grounds that it is undesirable to employ married woman teachers, whose husbands are supporting them, and has given notices determining the engagement of such teachers,

Held, that the action of the authority was a lawful and proper exercise of the discretionary powers vested in it by statute, and in the absence of evidence to show that it had taken into consideration any matters not belonging to its educational sphere, the court could not interfere with its decision.

Decision of Romer, J., 69 SOL. J., 812, reversed.—SHORT *v.* POOLE CORPORATION, *C.A.*, 245; 1926, 1 Ch. 66.

ELECTRICITY:—

Area of Supply—Premises Partly Inside and Partly Outside the Area—"Supply"—Point of Supply—Supply Inside Area for Use Outside—Electric Lighting Act, 1882, 45 & 46 *Vict. c.* 56, *s.* 4—*London* (*Westminster and Kensington*) *Electric Supply Companies Act*, 1905, 8 *Edw.* 7, *c.* xviii, *s.* 8—*Electric Lighting Act*, 1909, 9 *Edw.* 7, *c.* 34, *ss.* 5 *and* 6.—The word "supply" in the electricity statutes and orders does not mean "supply for use," or "supply to the point of consumption," but means "supply at the consumers' terminals."

Attorney-General v. *Leicester Corporation*, 1910, 2 Ch. 359, applied.

Decisions as to the construction of the word "supply" in Acts relating to water and gas are of no assistance in construing that word in electricity statutes.

Gas Light and Coke Co. v. *South Metropolitan Gas Co.*, 1890, 62 L.T. 126, and *Attorney-General* v. *West Gloucestershire Water Co.*, 1809, 1 Ch. 636 and 1909, 2 Ch. 338, distinguished.—ATT.-GEN. *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., *Tomlin, J.*, 486; 1926, 1 Ch. 542.

ESTATE DUTY:—

Estate settled by Act of Parliament—Estate rendered inalienable thereby—Moneys deposited with Inland Revenue before Assessment—Option to Raise and Pay Duty out of Corpus—Finance Act, 1922, 12 & 13 *Geo.* 5, *c.* 17, *s.* 44.—Where the Inland Revenue have only been put in possession of a fund in order that they may be able to pay themselves when duty is assessed, such transaction is not a payment of duty, and accordingly where there had been great delay in the assessment of the duty and it had not been assessed until after the date of the passing of the Finance Act, 1922, although the tenant for life had from time to time paid sums to the Inland Revenue to meet the assessment when made, he was held entitled to raise and pay out of the corpus under s. 44 of the Finance Act, 1922.

Held, however, that the rent-charges were not inalienable and accordingly that the persons entitled thereto were not entitled to have the duty thereon raised out of the corpus under s. 44.—*Re* ABERGAVENNY'S SETTLED ESTATES, *Russell, J.*, 634; 1926, 1 Ch. 465.

EVIDENCE:—

Claim to Intestate's Estate—Evidence of Pedigree—Proof of Marriage—Certificates of Births and Deaths—Entry of Parents' Names—Births and Deaths Registration Act, 1836, 6 & 7 *Will.* 4, *c.* 86, *ss.* 17, 18, 20, 38.—A birth or death certificate, being a certified copy of an entry in the register of births and deaths containing the names of the parents of the person whose birth or death is certified, and the maiden name of the mother given as her former name, is some evidence of the lawful marriage of the parents, and is admissible as such. It does not, however, amount to *prima facie* evidence of the marriage, but must be taken into consideration together with any other evidence available.

In re Wintle, L.R. 9 Eq. 373, overruled.

Decision of Romer, J., reversed.—*Re* STOLLERY; WEIR *v.* TREASURY SOLICITOR, *C.A.*, 385; 1926, 1 Ch. 284.

EXCESS PROFITS DUTY:—

Requisition of Rum by Admiralty—Resulting Profit—Whether "arising from any Trade or Business"—Accounting Period—Finance (No. 2) Act, 1915, 5 & 6 *Geo.* 5, *c.* 89, *ss.* 38, 39.—In 1917, the Admiralty, under Defence of the Realm Regulations, requisitioned rum from traders, paying £10,315. In 1921 the War Compensation Court allowed the traders a further £5,309, and they were assessed to Excess Profits Duty in the sum of £4,247 (being 80 per cent. of £5,309), in respect of the year ending April, 1918. Upon appeal:

Held, that ss. 38 and 39 of the Finance (No. 2) Act, 1915, imposed the duty upon profits arising from "ALL trades or business," and the profit was none the less a profit because the rum had been requisitioned, or because it had been taken in a condition in which the traders would not ordinarily have sold it. Further, the £5,309, although paid in 1921, was part of a transaction effected in 1917, and therefore the assessment was correct.—INLAND REVENUE COMMISSIONERS *v.* NEWCASTLE BREWERIES, *C.A.*, 734.

And see Income Tax.

GAMING:—

Betting on Horse Race—Claim by Winner—Dispute about Odds—Whether to be based on Starting Price—Reference to Tattersalls' Committee—Promise by Loser to abide by their Decision—No Agreement to pay amount Awarded—Whether new Agreement on new Consideration.—The plaintiff made a bet with the defendant on a horse in a race for the Cesarewitch Stakes. The horse won, and then a dispute arose between the parties about the odds; the question being whether the plaintiff was entitled to be paid on the starting price which was 100 to 1, or on the basis of the odds being limited to 33 to 1. The parties agreed to refer the dispute to Tattersalls' Committee. The defendant agreed to abide by the decision of the Committee. The Committee decided that the plaintiff was entitled to be paid at the starting price, and was therefore entitled to recover £1,000, and not £330.

In an action by the plaintiff to recover £1,000 as awarded by the Committee,

Held, that the only dispute referred to Tattersalls' Committee, was whether the bet was made at starting price or whether the odds were limited. It could not be said that the mere willingness to refer the matter to the Committee imported a fresh agreement on a new consideration so as to take the matter out of the Gaming Acts. The action failed.

Decision of Horridge, J., affirmed.—HYDE *v.* TYLER, *C.A.*, 856.

GIFT:—

Cheque drawn in favour of Donee—Cheque presented, but not paid—Signature questioned but regular—Death of Donee—Claim against her estate—Gift imperfect and invalid.—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, and the cheque was duly presented but not honoured, owing to the signature being of a very shaky and doubtful character. The donor died before the cheque could be again presented.

Held, that the cheque not having been paid, there was no valid and effectual gift of the money to the donee.

In re Beaumont; Beaumont v. *Ewbank*, 1902, 1 Ch. 889, approved.

Bromley v. *Brunton*, 1868, L.R. 6 Eq. 275, disapproved.—*Re* SWINBURNE; SUTTON *v.* FEATHERLEY, *C.A.*, 64; 1926, 1 Ch. 38.

HIGHWAY:—

Widening of Narrow Lane by Corporation—Removal of Footpath on One Side—Injury to Premises of Adjoining Owner—Exercise of Statutory Powers Arbitrarily or Carelessly—Public Health Act, 1875, 38 & 39 *Vict. c.* 55, *s.* 149.—The corporation of a borough, in exercise of their powers as highway authority, widened a narrow lane on which there was a steep gradient by entirely removing a raised footpath on one side. The owner of the property on that side, whose premises were bounded by a garden wall with two entrances from the road, complained that the corporation had not acted reasonably as they had given him no notice of their intention, and had depreciated his premises seriously by making the approach to them more dangerous and less convenient than before, and brought this action for an order to restore the footpath. There was a wider footpath on the other side of the road.

Held, that the county court judge had evidence before him on which he was right in holding that the defendants had exercised their powers arbitrarily, carelessly or oppressively, and that the plaintiff was entitled to succeed.

East Fremantle Corporation v. *Annois*, 1902, A.C. 213, distinguished.

Decision of the Divisional Court affirmed.—HOWARD-FLANDERS *v.* MALDON CORP., *C.A.* 544.

And see Nuisance.

HUSBAND AND WIFE:—

1. *Divorce—Application to Vary Settlement—Wife's Bond to Pay Annuity to Husband—Whether "Settlement"—Matrimonial Causes Act*, 1859, 22 & 23 *Vict. c.* 61, *s.* 5—*Judicature (Consolidation) Act*, 1925, 15 & 16 *Geo.* 5, *c.* 49, *s.* 192.—A bond by a wife, after marriage, to pay her husband an annuity, and a deed poll by which she appointed to him a reversionary interest in property were held to constitute a "settlement," which, on the dissolution of the marriage by reason of the husband's misconduct, the court could vary by the exercise of its discretionary jurisdiction.

Decision of Lord Merivale, P., affirmed.—BOSWORTHWICK *v.* BOSWORTHWICK, *C.A.* 857.

2. *Maintenance Order—Discharge by Misconduct—Payment of Arrears Enforced—Summary Jurisdiction (Married Women) Act*, 1895, 58 & 59 *Vict. c.* 39, *ss.* 6, 9.—Where a maintenance order was discharged by the misconduct of the wife, she was held to be entitled to recover arrears under the order which had fallen due prior to the discharge.—OUTERBRIDGE *v.* OUTERBRIDGE, *K.B.D.* 1113.

3. *Maintenance Order—Order made by a Dominion Court—Confirmation by Justices in England—Modification of Sum Payable—Jurisdiction of Justices—Appeal by Case Stated—Summary Jurisdiction (Married Women) Act*, 1895, 58 & 59 *Vict. c.* 30, *ss.* 7, 11—*Maintenance Orders (Facilities for Enforcement) Act*, 1920, 10 & 11 *Geo.* 5, *c.* 33, *ss.* 1, 3, 4, 7.—(1) Where a maintenance order made by a court in one of His Majesty's Dominions has been confirmed by a court of summary jurisdiction in this country under the Maintenance Orders (Facilities for Enforcement) Act, 1920, there is no statute or decision which takes away the jurisdiction of the King's Bench Division to hear by way of a case stated an appeal from the decision of the confirming justices.

(2) Upon an application in this country under the Maintenance Orders (Facilities for Enforcement) Act, 1920, to confirm a maintenance order made in a court in one of His Majesty's Dominions under which the husband is to pay over £2 a week, the order may be confirmed with such modifications "as to the court after hearing the evidence may seem just." But there is no indication in the Act that upon such an application the confirming justices must reduce that amount to the £2 a week mentioned in s. 7 of the Summary Jurisdiction (Married Women) Act, 1895.—PEAGRAM *v.* PEAGRAM, *K.B.D.* 670; 1926, 2 K.B. 165.

INCLOSURE:—

Award—Repair of Wall—Power of Commissioner to Order Repair of Wall—Ultra Vires—*Implied Power—Omission of Express Power from Act—Inclosure Act*, 1836, 6 & 7 *Will.* 4, *c.* 115, *ss.* 26, 27 *and* 32—*Inclosure Act*, 1845, 8 & 9 *Vict. c.* 118, *s.* 83.—There is an implied power conferred on the Commissioner to direct the maintenance of walls by virtue of the express powers conferred upon him to divide the land, etc., by ss. 26 and 27 of the Inclosure Act, 1836.

Cuckfield Rural District Council v. *Goring*, 1898, 1 Q.B. 865, distinguished.—GARNETT *v.* PRATT, *Lawrence, J.* 736; 1926, 1 Ch. 897.

INCOME TAX:—

1. *Dominion Income Tax—Relief from United Kingdom Income Tax—Company Obtaining Relief—Shareholders—Passing on the Relief.*—Section 27 (5) of the Finance Act, 1920, is not limited to cases where relief has been obtained by a company directly as applicant for relief under s-s. (1), but the words "relief from that tax given under this section," will *prima facie* include relief from tax given under s-s. (5), by a reduction in the amount of tax deducted from a dividend and the company that has the tax deducted from the dividend is itself within the operation of the sub-section when it seeks to deduct tax from its own dividends.

Sheldrick v. *The South African Breweries Limited*, 1923, 1 K.B. 173, applied.—GOLD FIELDS AMERICAN DEVELOPMENT CO. *v.* CONSOLIDATED GOLD FIELDS OF SOUTH AFRICA, *Tomlin, J.* 426; 1926, 1 Ch. 338.

2. *Employee's Salary Paid Free of Tax—Tax Paid by Employer—Basis of Assessment.*—Where a company, although voluntarily and without any agreement to that effect, pays the income tax upon the salary of an employee, the latter's salary for the purpose of assessment must be calculated at the actual amount received, plus the amount of tax paid by the employer.—HARTLAND *v.* DIGGENES, *H.L.* 344; 1926, A.C. 289.

3. *Excess Profits Duty—Single Purchase of Government Surplus Linen—Resale to Manufacturers within Seven Months—Whether Profits of Deal Assessable—"Trade or Business"—"Annual Profits or Gains"—Finance (No. 2) Act*, 1915, 5 & 6, *Geo.* 5, *c.* 59, *s.* 38—*Income Tax Act*, 1918, 8 & 9 *Geo.* 5, *c.* 40, *Sched. D, Case I.*—The appellant, an agricultural engineer, who had no connexion with the linen trade, contracted to purchase the whole of the Government surplus stock of aircraft linen existing in 1919, on condition that he took delivery and paid for all of it within six months. The stock amounted to 45,000,000 yards, and the appellant sold the whole of it within seven months and made a profit of over £1,500,000.

Held, that in carrying out this operation he was engaged in "a trade or business," and that the profits resulting therefrom were "annual profits or gains" within Sched. D, Case I, of the Income Tax Act, 1918, as they occurred in the year of assessment. He was therefore properly assessable both to excess profits duty and income tax in respect of those profits.

Ryall v. *House and Honeywill*, 1923, 2 K.B. 447, approved and followed.—MARTIN *v.* LOWRY; MARTIN *v.* INLAND REVENUE COMMISSIONERS, *C.A.*, 301; 1926, 1 K.B. 550.

4. *Holding of Exchequer Bonds and War Loan—Bonds redeemed before Year of Assessment—Interest from both Securities during previous Year—Tax not payable in respect of Interest which had ceased—Income Tax Act*, 1918, 8 & 9 *Geo.* 5, *c.* 40, *Sched. D, Case III, rr.* 1, 2.—By the Income Tax Act, 1918, Sched. D, Case III, r. 1 (*f*), it is provided that the tax shall extend to "interest on any Exchequer bonds . . . and on any securities issued under the War Loan Acts . . . in cases where such interest is paid without deductions of tax" and, by r. 2, "The tax shall be computed in each case on the full amount arising within the year ending on that day of the year preceding the year of assessment . . . and shall be paid on the actual amount as aforesaid, without any deduction." This does not mean that where there is a holding of Exchequer bonds and War Loan, and the interest on one class of security ceases by reason of sale or redemption, tax is payable on the full amount of the two classes of securities, taken together or the year ensuing by reason of the direction to compute such tax by reference to the year preceding. Those rules are not a charging section, but merely show the arithmetical calculations by which a tax already charged may be arrived at, and that tax already charged being upon income, profits or gains, it is not leviable upon income which has ceased to exist.

Principles established by *Brown* v. *National Provident Institution*, 1921, 2 A.C. 222, and *Whelan* v. *Henning*, 69 SOL. J., 159; 1925, 1 K.B. 387, followed.—GRAINGER *v.* MAXWELL, *C.A.*, 247; 1926, 1 K.B. 430.

5. *Income of English Beneficiary under Will of American Testator—Paid into Bank in New York—Foreign Securities—Foreign Possessions—Income Tax Act*, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Cases IV and V, rr.* 1 *and* 2.—The appellant's wife was entitled to the income of the residuary estate under the Will of her father, an American citizen, who died domiciled in the United States. The funds were invested in stocks, shares and securities in the names of American trustees, who paid the income, after deducting American income tax and other outgoings into a bank in New York to the account of the legatee.

Held, that the income was taxable, not as foreign securities or foreign stocks, shares or rents under Case IV, Rule 1 of Case V, but as being "possessions not of the United Kingdom, under Rule 2 of Case V, and must be computed on the full amount of the actual sums received by the appellant's wife in the United Kingdom, but not on the full income. She could not be said to be entitled to the stocks and securities in specie, but only to a balance of income produced therefrom."

Singer v. *Williams*, 1921, 1 A.C. 91, applied.

Decision of Rowlatt, J., reversed.—ARCHER-SHEE *v.* BAKER, *C.A.*, 733.

6. *Office or Employment of Profit—Manager of Private Company—Assessability—Schedule E or Schedule D—Income Tax Act*, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E, r.* 6—*Finance Act*, 1922 (12 & 13 *Geo.* 5, *c.* 17), *s.* 18.—The combined effect of r. 6 of Sched. E of the Income Tax Act, 1918, and s. 18 of the Finance Act, 1922, is that the holder of any employment or office of profit is liable to be assessed to income tax under Sched. E. It is not necessary that such employment should be of a public nature or, in the case of an employee of a company, that the company itself should be a public one.—WATSON *v.* ROWLES, *C.A.*, 796.

7. *Old Undertaking replaced by New—Latter Taxed on Profits of Predecessor—Three Years' Average—Relief when Profits fall from "Specific Cause"—General Trade Depression—Meaning of "Specific"—Income Tax Act*, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched.* D, *Cases* 1 *and* 2, *r.* 11.—The provision in r. 11 of cases 1 and 2 of Sched. D of the Income Tax Act, 1918, that a new undertaking shall be taxed upon the basis of the three previous years' profits of its predecessors unless it can be shown that the profits of the new undertaking have fallen from some "specific cause," does not mean that the cause must be something peculiar to the undertaking in question. A severe trade depression, though affecting other members of the trade equally, may be a "specific cause" entitling to relief.

Ryhope Coal Co. v. *Foyer*, 30 W.R. 87 (7 Q.B.D. 485), followed.—ELLIOTT *v.* DUCHESS MILL, LTD., *C.A.*, 891.

8. *Poultry Farming—Husbandry—Assessment of Profits—Schedules B and D of the Income Tax Act*, 1918, 8 & 9 *Geo.* 5, *c.* 40.—The respondent was a poultry farmer who bred poultry and sold the eggs therefrom.

Held, that the respondent was not carrying on a trade within the meaning of Sched. D, but that his occupation was husbandry within the meaning of Sched. B of the Income Tax Act, 1918, and that he was entitled to be assessed under that schedule in respect of the profits of his husbandry.—JONES *v.* NUTTALL, *K.B.D.*, 586.

9. *Professional Cricketer's Benefit Match—Net Proceeds of Gate Money—Whether Assessable to Tax—Income Tax Act*, 1918, 8 & 9 *Geo.* 5, *c.* 40, *Sched.* E.—The net proceeds of gate money received from a professional cricketer's benefit match and payable to him are assessable to income tax, as being a sum received in virtue of the employment:

Per Lord Hanworth, M.R., and Warrington, L.J.; Sargant, L.J., dissenting.—REED *v.* SEYMOUR, *C.A.*, 707.

10. *School—Charity—Exemption—Fees exceeding Expenditure—Surplus—Carrying on a Trade—Surplus whether liable to Tax.*—A charitable institution which carries on a trade at a profit is chargeable with income tax in respect of its profits or gains, notwithstanding that they can only be applied to the purposes of the charity. Accordingly the surplus receipts of a school admittedly a charity are liable to tax though applied only to the purposes of the school.—BRIGHTON COLLEGE *v.* MARRIOTT, *H.L.*, 245; 1926, A.C. 799.

11. *Societies—Relief to Members—To Widows and Orphans of Members—Whether Charitable Purposes—Exemption from Income Tax—Income Tax Act*, 1918, *Geo.* 5, *c.* 40, *s.* 37 (1) (*b*).—Section 37 (1) (*b*) of the Income Tax Act, 1918, enacts that: "Exemption shall be granted from tax under Schedule C, in respect of any interest, annuities, dividends, or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only."

Relief given by a society out of its funds, provided by members and non-members, to indigent members or to the indigent widows and orphans of its members, according to the rules established by its charter, is applied to charitable purposes only, and the income from the funds is exempted from liability to tax.—INLAND REVENUE COMMRS. *v.* SOCIETY FOR RELIEF OF WIDOWS AND ORPHANS OF MEDICAL MEN, *K.B.D.*, 837.

12. *Super Tax—Company—Accumulated Profits—Increase of Capital—New Shares paid for out of Profits—Option of Shareholders to take Shares or Money—Liability to Tax.*—Where a company increases its capital by the issue of new shares, or, at the option of the shareholders, pays cash instead of shares, both of which are paid as a bonus out of accumulated profits in the reserve fund, such shares or cash are income and not capital in the hands of the shareholders who are, therefore, assessable to tax thereon—INLAND REVENUE COMMRS. *v.* D'EWES COKE, *K.B.D.*, 445; 1926, 2 K.B. 246.

13. *Unlawful Business—Profits arising from Illicit Traffic in Liquor—Province of Ontario.*—Income Tax Acts are not necessarily restricted in their application to lawful businesses. In the Province of Ontario profits gained from the illicit traffic in liquor are assessable to the tax.—CANADIAN MINISTER OF FINANCE *v.* SMITH, *P.C.*, 942.

And see Annuity, Company.

INFANT:—

Custody—Primary Right of Parent—Welfare of Infant—Considerations guiding the Court.—The welfare of a child is the paramount consideration guiding the court in making an order as to its custody. But it is not the only consideration, and the next consideration is the right of a parent, particularly of a parent whose conduct has not been impeached; and therefore effect will be given to a parent's right and desire for the custody of his child where the welfare of that child does not require a contrary decision.—*Re* THAIN, *C.A.*, 634.

INSURANCE:—

1. *Burglary—Partners—Proposal Form—Answers—Misrepresentation—Concealment—Materiality—Non-Disclosure by one Partner.*—It is a misrepresentation sufficient to vitiate a policy of insurance if one of two partners who wished to insure their premises did not disclose the fact that another company had refused to issue a policy to him in respect of the same premises before the partnership began. The non-disclosure also amounted to the concealment of a material fact.—GLICKSMAN *v.* LANCASHIRE AND GENERAL ASSURANCE CO., *H.L.*, 1111.

2. *Company—Loans on Policies—Rate of Interest—Collateral Contract—Established Practice.*—In an action by a policy-holder against the insurance company for a declaration that the company were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, the plaintiff based his case on an alleged collateral contract or on established practice.

Held, that there was no collateral contract, and that the practice proved was to make loans at the rate of interest fixed by the board, and not to charge one fixed rate for all time.—THISTLETON *v.* COMMERCIAL UNION ASSURANCE CO., *Eve, J.*, 892; 1926 1 Ch. 888.

3. *Theft—Policy—Exceptions Clause—Goods "Entrusted" to Customers—Construction—Jewellery Delivered on Approval—Larceny by a Trick—"Customer"—Larceny Act*, 1916, 6 & 7 *Geo.* 5, *c.* 50, *s.* 1.—The defendant issued to the plaintiff, a jeweller, a policy insuring him against loss by theft of (*inter alia*) jewellery which he held in trust or for which he was held to be responsible while in his custody or in the custody of any person or persons to whom he might entrust the same on the condition of sale or return for valuation or inspection or for any other purpose whatsoever. The policy contained a clause excepting liability for loss by theft or dishonesty committed by (*inter alia*) any customer in respect of goods entrusted to them by the assured, unless such loss arose when the goods were deposited for safe custody by the assured with such customer. During the currency of the policy, a woman E. called from time to time at the plaintiff's shop and purchased small articles of jewellery, for which she paid from time to time by cheque. After several of these transactions had been completed and settled, she obtained from the plaintiff two valuable pearl necklets, one worth £700 and the other worth £750, by falsely representing to him that the one was for her husband's approval, and the other for her sister's fiancé's approval, with a view to purchase by her husband and her sister's fiancé respectively. She made various other false statements, and having obtained the necklets converted them to her own use. She was afterwards convicted on her own confession of larceny by a trick, and was sentenced to sixteen months' imprisonment.

Held (Atkin, L.J., dissenting), that the woman was a customer of the plaintiff and the plaintiff had entrusted the necklets to her within the meaning of the exceptions clause, and the defendant was therefore not liable under the policy.

Decision of McCardie, J., reversed.—LAKE *v.* SIMMONS, *C.A.*, 584 ; 1926, 2 K.B. 51.

4. *Marine—Charter-party—War Risks undertaken by Charterers—Vessel Sunk by Collision in* 1917*—Arbitration in* 1925*—Award a Condition Precedent to Right of Action—Statute of Limitations*, 1623, 21 *Jac. I, c.* 16.—A steamship was requisitioned by the Admiralty during the war under the terms of a charter-party under which the charterers undertook all war risks, and all disputes were to be referred to arbitration, which should be a condition precedent to the commencement of any action at law. The vessel was sunk by collision in July, 1917, and the owners gave notice of the loss to the Admiralty. Owing to delay in deciding in other cases what was the nature of "war risks," no arbitration was held until 1925, when the arbitrator made an award in favour of the owners. The Crown contended that the claim was barred by the Statute of Limitations.

Held, that as there was no complete cause of action until the award was made, time did not begin to run until February, 1925, and therefore the action was not barred.

Scott v. *Avery*, 5 H.L.C. 811, applied.—CAYZER IRVINE AND CO. *v.* BOARD OF TRADE, *C.A.*, 875.

5. *Third Party Risks—Rateable Contributions when Two Policies—Basis of Payments.*—Where claims were made under two insurance policies, in one case by the person involved in the accident, and in the other by a person as trustee for the first person, and each of those policies contained a provision that there was no liability where the risk was covered by another policy, and also provided that in the event of the existence of two policies then they should contribute rateably, these two provisions were to be read together as showing that rateable contributions were intended, and the correct basis of the contributions was that each should pay one-half of the amount claimed.—GALE *v.* MOTOR UNION INSURANCE CO., *K.B.D.*, 1140.

And see Marine Insurance.

INTERNATIONAL LAW :—

War—Defence of the Realm—Neutral Vessel—Seizure—Detention—Belligerent Right of Visit and Search—Prerogative Right—Claim for Compensation—Jurisdiction of Prize Court—Jurisdiction of War Compensation Court—Indemnity Act, 1920, 10 & 11 *Geo.* 5, *c.* 48, *ss.* 2, 3.—Where a neutral vessel was seized and detained in the exercise of the billigerent right of visit and search, during the war, a claim by the owners of the neutral vessel for compensation was held to be a matter within the jurisdiction of the Prize Court under s. 3 (*a*) of the Indemnity Act, 1920, and the War Compensation Court had no jurisdiction to deal with such a claim.—NETHERLANDS—AMERICAN STEAM NAVIGATION *v.* H.M. PROCURATOR-GENERAL, *C.A.*, 209 ; 1926, 1 K.B. 84.

JUSTICES :—

1. *Appeal—Quarter Sessions—Assault—Prison Officer treated as Constable—Prisons Act*, 1898, 61 & 62 *Vict., c.* 41, *s.* 10.—A prison officer acting as such, is, by s. 10 of the Prisons Act, 1898, entitled to the same protection as a constable, and a person found guilty of assaulting a warder is liable on summary conviction to a sentence of six months' imprisonment instead of the maximum of two months' imprisonment for an assault on an ordinary person.—POINTING *v.* WILSON, *K.B.D.*, 1091.

2. *Recognisance—Entered into by Clerk to Council—Personal Recognisance—Council not Bound—Summary Jurisdiction Act*, 1857, *s.* 3.—Where a corporation desires to prosecute an appeal by way of case stated, it is not sufficient that the recognisance be entered into by the clerk to the corporation in his own name and without authority, even though the conditions endorsed on it were those required.—LEYTON U.D.C. *v.* WILKINSON, *K.B.D.*, 1069.

LANDLORD AND TENANT :—

1. *Covenant to Repair by Lessor—Breach—Notice of Breach given to Lessor—Extent of Non-Repair not Specified—Lessee Injured—Liability of Lessor.*—Where a lessor who has covenanted to repair the outside of the demised premises receives from the lessee a notice stating a want of repair, even though the notice does not specify the nature and extent of the non-repair, he is thereby put upon enquiry, and if he, or his agent, enters and finds that a part of the premises is in a dangerous condition, he acts at his peril if he does not at once execute the necessary repairs, or, if this is not practicable, take temporary measures to render the premises safe for use by the lessee.—GRIFFIN *v.* PILLET, *K.B.D.*, 110 ; 1926, 1 K.B. 17.

2. *Implied Condition that House Fit for Human Habitation—Latent Defect in Ceiling—Damage—Absence of Notice—Liability of Landlord—Housing, Town Planning, &c., Act*, 1909, 9 *Edw.* 7, *c.* 44, *ss.* 14 & 15.—Section 14 of the Housing, Town Planning, &c., Act, 1909, which relates to houses let at certain rents in various districts, states that "there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation . . ." Section 15, s-s. (1), enacts : "The last foregoing section shall, as respects contracts to which that section applies, take effect as if the condition implied by that section included an undertaking that the house shall, during the holding, be kept by the landlord in all respects reasonably fit for human occupation." By s-s. (2) : "The landlord or any local authority, or any person authorised by him or them in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any house, premises, or building to which this section applies for the purpose of viewing the state and condition thereof." The tenant of a house within the provisions of the Housing, Town Planning, &c., Act, 1909, is not precluded from recovering for damages caused by a latent defect of which he was thereby unable to give notice to the landlord. *Quære*, if the defect had been patent.

Hugall v. *M'Lean*, 1885, 53 L.T. 94, distinguished.—FISHER *v.* WALTERS, *K.B.D.* 710 ; 1926, 2 K.B. 315.

3. *Lease—Adjacent Land owned by Landlord—Culvert Confining Brook on Adjacent Land—Non-Repair of Culvert—Leased Building Damaged by Escaping Water—Lessee's Remedy—Breach of Covenant—Quiet Enjoyment—Derogation from Grant—Lessor Liable for Negligence by Omission.*—A lessor allowed a culvert confining a brook to fall into disrepair, so that escaping water flowed into land leased by the lessor's predecessor in title, and damaged a building, in respect of which there was a covenant by the lessor for quiet enjoyment.

Held, following principles laid down in *Anderson* v. *Oppenheimer*, 5 Q.B.D. 602, that the omission to repair the culvert was tantamount to an act of commission so as to be a breach of the covenant for quiet enjoyment and the lessee could recover damages for the injury to the building.—BOOTH *v.* THOMAS, *C.A.* 365 ; 1926, 1 Ch. 397.

4. *Lease—Covenant—Breach—Failure to Renew Off-beer Licence—Application for Spirit Licence Contemplated—Whether Breach of Covenant Possible before Spirit Licence Obtained.*—The plaintiff, as lessor of certain licensed premises in respect of which an off-beer licence only was held, sued the defendants for damages for breach of covenant in failing to obtain a renewal of the licence. The covenant in question stated that "after a licence for the sale of spirits shall have been obtained [the lessee] will not, so long as such licence shall be continued . . . use the said premises . . . except as a licensed public-house. And . . . the lessee shall, during all the residue of the term hereby granted . . . use . . . . the said messuage and premises as an inn or public-house duly licensed for the sale and consumption of wine, spirits, ale or beer." He was also to conduct "the same" in such orderly manner as not to lose those licences, and to do what was requisite for obtaining a renewal of them. The off-beer licence, the only one taken out, was lost by reason of a conviction for offences against the licensing laws. The defence alleged that the premises were not a public-house ; that the lease contemplated an application for a wine and spirit licence ; that such licence had not been obtained ; and that there could be no breach of covenant until such licence had been obtained.

Held, that the words "the same" referred to "the said messuage or public-house" which was continually referred to in the lease ; that the word "licences" meant licences in general and not merely a spirit licence ; that there had been a breach of covenant ; and that the plaintiff was entitled to £550.—SAUNDERS *v.* YOUNG & COMPANY'S BREWERY, *K.B.D.* 247.

5. *Lease—Covenant Against Using Premises otherwise than as a Private Dwelling-house—Covenant Against Using for a Trade or Business—Paying Guests—Breach of Covenant.*—When a person of set purpose occupies a house which is beyond her means and for the purpose of supplementing such means and continuing to live in the house, secures visitors to come and live there for long and short periods upon payment of sums for board and residence, it is possible to say that the house is being used as a private dwelling-house only, and accordingly the covenant not

to use it otherwise than as a private dwelling-house is broken. When the receiving of paying guests is done as a permanent process, and the house is kept available for the accommodation of any approved person who is prepared to pay, such house is being used for the purpose of a trade or business.—THORN *v.* MADDEN, *Tomlin, J.*, 75.

6. *Lease—Expiration of Lease—Tenant Holding Over as Quarterly Tenant upon same Terms as Lease—Agreement in Writing signed only by Lessor—Assignment of Reversion to Plaintiff—Right of Assignee to Sue for Breaches of Covenant in Lease—Conveyancing Act*, 1881, 44 & 45 *Vict. c.* 41, *s.* 10. —In 1895 a lease of certain premises was granted for a term of twenty-five years, and in 1900 the residue of that term was assigned to the defendant. In 1910 a building lease of the same premises was granted to X for ninety-nine years, but subject to and with the benefit of the lease of 1895. In 1911 X obtained an advance by an equitable mortgage to Y of the ninety-nine years' lease. In 1915 Y entered into possession under his mortgage. In 1917 Y verbally agreed that the defendant should continue in possession as a quarterly tenant on the terms of the old lease, but at an increased rent. Y's agent signed two letters confirming this agreement, but the defendant signed nothing. In 1918 Y further verbally agreed that the defendant should remain in possession until 1920. This agreement was confirmed in writing in a letter dated 7th September, 1918, signed by Y's agent, but not by the defendant. In July, 1920, the plaintiff received an assignment of the building lease from Y, and also acquired the full freehold. The defendant left the premises in November, 1920. On an action for damages for breaches of the repairing and painting covenants:

Held, that, although the document showing the terms of the tenancy—the letter of 7th September, 1918—had been signed by the landlord only, there was a sufficient agreement in writing to bring the case within s. 10 of the Conveyancing Act, 1881, and the plaintiff was entitled to sue for breach of the terms, express or implied, in that letter.—RYE *v.* PURCELL, *K.B.D.* 345; 1926, 1 K.B. 446.

7. *Lease—Landlord also adjoining Landowner—Confinement of Natural Stream in Culvert—Non-repair of Culvert—Lessee Damaged—Covenant for Quiet Enjoyment—Breach of—Derogation from Grant—Act of Omission Involving a Duty—Liability of Lessor.*—A covenant for quiet enjoyment may be broken by an omission if the omission is the omission of a duty, and was held broken where the owner of land under which a culvert flowed was also the lessor of property on adjoining land which collapsed as a result of a flow of water out of a hole in the culvert due to want of repair.

Cohen v. *Tanner*, 1900, 2 Q.B. 609, followed.—BOOTH *v.* THOMAS, *Russell, J.*, 226; 1926, 1 Ch. 397.

8. *Lease—Repairing Covenants—Breaches—Past Breaches—Surrender of Lease—Release in General Terms—Liability for Past Breaches.*—A surrender of the lease of a dwelling-house by the lessee does not affect his liability for past breaches of the repairing covenants. Nor does a release in general terms by the lessor. The lessee remains liable for all breaches in respect of which a cause of action has accrued, notwithstanding the surrender and release.

Decision of Finlay, J., reversed.—RICHMOND *v.* SAVILL, *C.A.*, 875; 1926, 2 K.B. 530.

9. *Lease—Tenant's Covenant to Pay Impositions and Outgoings—Expiration of Lease—Tenant holding over on Year to Year Tenancy—Large Sum demanded by Local Authority for Paving—Liability of Tenant—Market Garden—Claim to submit to Arbitration—Agricultural Holdings Act*, 1923.—Land was leased in 1885 with a covenant by the tenant to pay all "assessments, impositions and outgoings." The lease having expired, the tenant remained in possession as tenant from year to year at a rent of £16 5s. The local authority of the district claimed from the landlord, the plaintiff, the sum of £188 2s. 9d. for the cost of making up the road, which the plaintiff paid, and sued to recover from the tenant, the defendant.

Held, following *Stockdale* v. *Ascherberg*, 52 W.R. 289; 1904, 1 K.B. 447, that the covenant being plain and unambiguous, it was not open to the tenant to say that it was not such a sum as was contemplated by the parties to the lease, and the tenant, having held over upon the terms of the lease, was liable to pay.

Held, further, that although the land in question was cultivated as a market garden within the meaning of the Agricultural Holdings Act, 1923, the tenant could not maintain that the only course open to the landlord was by arbitration under s. 16 of the Act. That section was applicable to matters between landlord and tenant, such as cultivation of the soil, compensation, etc., and did not apply to an outside demand, which both landlord and tenant might resist, and which was remote from matters contemplated by the Act.—LOWTHER *v.* CLIFFORD, *C.A.*, 544.

10. *Rent Restriction—Decontrol—Furnished Sub-lettings of Whole of Premises—Part sub-let furnished later—Action for Possession of Whole while Tenancy of Part continuing—Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920, 10 & 11 *Geo.* 5, *c.* 17, *ss.* 5, 12, *s-s.* (2), *proviso* (i).—Section 12, s-s. (2), of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, states: "This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—(*a*) in the Metropolitan police district . . . £105 . . . and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that (i) this Act shall not . . . apply to a dwelling-house *bona fide* let at a rent which includes payments in respect of board, attendance or use of furniture." Where the tenant of an unfurnished house within the operation of the Rent Restrictions Act lets it furnished, an action for possession by the landlord for breach of covenant cannot be maintained if it is brought after the period of the furnished sub-letting is terminated and the tenant is again in possession. Where a part of the premises has been sub-let furnished, an action for possession of the whole house for breach of covenant cannot be maintained during the continuance of that sub-letting.—LESLIE & CO. *v.* CUMMING, *K.B.D.*, 738.

11. *Rent Restriction—Decontrol—Tenant in Possession under a long Lease at a Ground Rent less than Two-thirds Rateable Value—Whether Lessee "Landlord"—Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920 (10 & 11, *Geo.* 5, *c.* 17), *s.* 12, *s-s.* (7)—*Rent and Mortgage Interest Restrictions Act*, 1923 (13 & 14 *Geo.* 5, *c.* 32), *s.* 2, *s-s.* (1).—Section 12, s-s. (7) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, enacts: "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy . . . and this Act shall apply in respect of that dwelling-house as if no such tenancy existed or ever had existed." Section 2, s-s. (1), of the Rent and Mortgage Interest Restrictions Act, 1923, states: "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house: Provided that, where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and that part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and, if the landlord is in or comes into possession of any part not so sub-let, the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act." Where a person, at the passing of the Rent Restrictions Act of 1923, or subsequently, is in or afterwards comes into possession of the whole of a dwelling-house to which the Rent Restrictions Act of 1920 applies, under a long lease and at a ground rent of less than two-thirds of the rateable value, he is the "landlord" of the house within the meaning of s. 2, s-s. (1), of the Act of 1923, and any part sub-let by him after the passing of the Act as a separate dwelling-house is decontrolled and not protected by the Rent Restrictions Act.

The opinion of Lord Darling in *Jenkinson* v. *Wright*, 1924, 2 K.B. 456, approved and followed.—FINEY *v.* GOUGOLTZ, *K.B.D.*, 758; 1926, 2 K.B. 322.

12. *Rent Restrictions—Dwelling-house—Flat—Lease for Fourteen Years at Standard Rent—Separate Agreement to pay Premium—Total Sum in Excess of Standard Rent—Agreement to pay Premium Vague and Uncertain—Validity—Action to Recover Premium—Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920 (10 & 11 *Geo.* 5, *c.* 17), s. 8.—By s. 8, s-s. (1), of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920: "A person shall not as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent . . ."; and by s-s. (3): "This section shall not apply to the grant, renewal, or continuance for a term of fourteen years of any tenancy."

A landlord let a flat, the standard rent of which was 13s. 6d. per week, at a rent of 25s. per week. As that rent was in excess of the rent permitted under the Rent Restrictions Acts, two separate documents were executed, (1) a lease for fourteen years at the weekly rent of 13s. 6d., with a proviso that the tenant might terminate the tenancy at any time by giving one week's notice, and (2) an agreement that the tenant should pay to the landlord a premium of 11s. 6d. weekly, thus aggregating the 25s. a week agreed.

Held (1), that the agreement to pay the premium taken by itself was void for uncertainty, and (2) that if it was to be read with the tenancy agreement the inference was that the two documents referred to rent and nothing else, and as the total sum provided for was in excess of the rent, the premium was not recoverable. In either case the premium agreement was invalid.—RUSH *v.* MATTHEWS, *C.A.*, 425; 1926, 1 K.B. 492.

13. *Rent Restriction—Dwelling-house—Notice to Quit—Tenant Holding Over as Statutory Tenant—Tenant Subletting Part and Staying in Possession of Remainder—Right of Landlord to Claim Possession of whole Premises—Rent Restrictions Act*, 1923, 13 & 14 *Geo.* 5, *c.* 32, *s.* 4.—Section 4 of the Rent Restrictions Act, 1923, enacts: The following section shall be substituted for s. 5 of the principal Act, namely: "5 (1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless (*inter alia*) (*h*) the tenant without the consent of the landlord has at any time after the thirty-first day of July, 1923, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let."

A statutory tenant who was in possession of the whole of a dwelling-house, which came within the protection of the Rent Restriction Act, 1923, sub-let a part of the house, and stayed in possession of the remainder of the premises himself. The landlord thereupon brought an action for possession, and the county court judge made an order in his favour.

Held, on appeal, that the landlord was not entitled to possession against the tenant, inasmuch as he had remained in possession of part of the premises.

Keeves v. *Dean*, 1924, 1 K.B. 685, distinguished.—CAMPBELL *v.* LILL, *K.B.D.*, 621.

14. *Rent Restriction — Dwelling-house — Part Sub-let — Tenant Leaving without Notice to Quit—Sub-tenant Holding Over—Landlord unable to Let Remainder—Position of Sub-tenant—Increase of Rent and Mortgage Interest (Restrictions) Act*, 1920, 10 & 11 *Geo.* 5, *c.* 17, *ss.* 5 (1) (*c*), 15 (3).—By s. 5 (1) (*c*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, no order or judgment for the recovery of possession of a dwelling-house to which the Act applies shall be made or given unless "the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession."

By s. 15 (3) "where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

The appellant, the landlord, had let the premises in question to a tenant who had sub-let two of the rooms to the respondent. The tenant quitted the premises without giving notice to the appellant and leaving the respondent in possession of the two rooms. The respondent claimed the exclusive use of the kitchen in consequence of which the appellant was unable to let the remainder of the premises. The County Court Judge refused to admit secondary evidence that the rent-book contained a covenant against sub-letting; he held that the respondent was lawfully in possession; and he refused to make an order for possession.

Held, dismissing the appeal, that leaving the premises without notice to quit did not come within the words of s. 5 (1) (*c*), and the sub-tenant was thereby protected under s. 15 (3).—STANDINGFORD *v.* BRUCE, *K.B.D.*, 346; 1926, 1 K.B. 466.

15. *Rent Restriction—Dwelling-house occupied by Tenant—Sub-lease of Part—Resumption by Tenant of Part Sub-let—Subsequent Sub-lease—Whether Decontrolled—Rent and Mortgage Interest Restrictions Act*, 1923, s. 2 (1).—Under a lease from a superior landlord the respondent occupied as tenant a house which came within the scope of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. He lawfully sub-let rooms in this house, which rooms were also a dwelling-house within the operation of the Act of 1920. After the sub-tenant had given up possession of the rooms the respondent entered into possession of them (after 31st July, 1923), and carried out certain decorations. On their completion, he sub-let the rooms to the appellant. The appellant, after paying the agreed rent for a certain period, applied for an apportionment of the rent of the premises. The decision of the registrar granting an apportionment was reversed by the county court judge.

Held, allowing the appeal, that the word "tenant" in the first proviso to s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, meant mesne tenant as distinct from landlord on the one hand, and sub-tenant on the other; that it was specially inserted in the proviso to meet the case of a tenant who was landlord to a sub-tenant; and that, therefore, the Act of 1920 did not cease to apply to the rooms sub-let to the appellant, although the respondent had been in possession of them during two sub-tenancies.—CATTO *v.* CURRY, *K.B.D.*, 368; 1926, 1 K.B. 460.

16. *Rent Restriction—Dwelling-house Owned by Employers Let to Employee—Occupation by Employee as Ordinary Tenant—Determination of Employment—Right of Tenant to Hold Over—Increase of Rent and Mortgage Interest (Restrictions) Act*, 10 & 11 *Geo.* 5, *c.* 17, *s.* 5 (1).—By s. 5 (1), exception (1), of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, an order or judgment for the recovery of possession of any dwelling-house within the operation of the Act can be made "where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment." The appellants purchased a number of houses for occupation by their workmen and let one to the respondent on his entry, and solely because of that entry, into their employment. The contract of service did not provide that the appellants should provide a house for the respondent, who had never been told that his right to occupy the house was conditional on his entering and remaining in the service of the appellants, and who thought that he was entitled to the full protection of the Rent Restrictions Act. The county court judge found that the house had not been let to the respondent in consequence of his employment under the appellants.

Held, dismissing the appeal, that it was not enough for the court to be satisfied that the appellants would not have let the premises but for the employment, it must also be satisfied that the tenant took the house because he was in the appellants' employment.—BRABY & CO. *v.* BEDWELL, *K.B.D.* 325; 1926, 1 K.B. 456.

17. *Rent Restriction—House Divided into Floors each Let as Separate Dwelling-houses—Landlord Recovering Possession of One Floor—Repairs Carried Out—Subsequent Letting of that Floor — Whether Decontrolled — Rent and Mortgage Interest Restrictions Act*, 1923, 13 & 14 *Geo.* 5, *c.* 32, *s.* 2 (1).—By s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the dwelling-house at any time after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house: Provided that, where part of a dwelling-house is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and if the landlord is in, or comes into possession of any part not so sub-let, the principal Act shall cease to apply to that part notwithstanding that a sub-tenant continues in, or retains possession of any other part by virtue of the principal Act."

The appellant, the landlord of a house divided into three floors, each of which was let as a separate dwelling-house within the operation of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, entered into possession of one of the floors after 31st July, 1923, and carried out certain repairs. A few days later he re-let it to a tenant who remained in occupation until May, 1924, when the respondent became the tenant. The respondent applied for an apportionment of the rent of the first floor. The county court judge held that the premises were not decontrolled. The landlord appealed.

Held, allowing the appeal, that the first floor was a dwelling to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied; that it came into the

possession of the landlord after the passing of the Rent and Mortgage Interest (Restrictions) Act, 1923, and had thereby become decontrolled; and that the proviso to s. 2 (1) of the Act of 1923 related to the sub-letting of a part of a house by a tenant and had no application to the present case.—DUNBAR *v.* SMITH, *K.B.D.*, 367; 1926, 1 K.B. 360.

18. *Rent Restriction—Recovery of Possession—Premises reasonably required by Landlord—Alternative Accommodation—Rent and Mortgage Interest Restrictions Act*, 1923, 13 & 14 *Geo.* 5, *c.* 32, *s.* 4, *s-s.* 1 (*d*).—By s. 4, s-s. 1 (*d*), of the Rent and Mortgage Interest Restrictions Act, 1923: "No Order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made unless (*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself . . . or for any person *bona fide* residing with him, . . . and (except as otherwise provided by this sub-section) the Court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character and proximity to place of work, and which consist either of a dwelling-house to which this Act applies or of premises to be let as a separate dwelling-house on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies." The tenant (the defendant) of a seven-roomed house, actually required only five of them. The landlord (the plaintiff), actually had need of only two rooms. The tenant resisted an action for possession brought by the landlord for possession of two rooms under s. 4 (1) (*d*) of the Rent and Mortgage Interest Restrictions Act, 1923.

Held, that the landlord could show that she reasonably required possession of the whole house in order that her actual requirements might be satisfied; and that the letting of the same five rooms at a rent determined by the county court judge to be reasonable was such alternative accommodation as satisfied the requirements of the sub-section.—THOMPSON *v.* ROLLS, *K.B.D.*, 775; 1926, 2 K.B. 426.

19. *Restrictive Covenant—Letting of Shops—Covenant against Letting Shops for Sale of Souvenirs—Breach of Covenant—Remedy.*—The defendants let to the plaintiffs certain shops at Wembley. The defendants wrote letters to the plaintiffs in which they (the defendants) expressly undertook not to let any of the adjoining shops for the sale of souvenirs. The defendants afterwards let one of the adjoining shops to a firm of toy dealers for the sale of "toys and goods" usually sold by them in their various shops. They also let another for the sale of "tobacco, cigars, cigarettes, pipes, pouches, cigarette cases, and general fancy goods," and others to an outfitter and embroiderer for the sale of neckties and handkerchiefs. In an action for breach of covenant, the plaintiff complained that articles properly described as souvenirs were sold in the adjoining shops.

Held, that there was no breach of the undertaking merely because one shop had been let to a tobacconist and another to an embroiderer. If a shop had been let for a purpose which would not ordinarily include the sale of souvenirs it would not be within the scope of the undertaking. In this case the shops were not let for a purpose which would ordinarily include the sale of souvenirs.

Decision of Shearman, J., 41 T.L.R. 612, reversed.—L. S. G., LTD. *v.* T.B. LAWRENCE, LTD., *C.A.*, 161.

20. *Weekly Tenancy—Notice to Quit—Length of Notice Required.*—A calendar week's notice, that is, a notice which excludes the day on which it is sent but includes the day on which it is received, is a good and valid notice to determine a weekly tenancy unless a contrary intention is proved.—NEWMAN *v.* SLADE, *K.B.D.*, 738; 1926, 2 K.B. 328.

LIBEL:—

Practice—Action for Damages—Defence—Plea of Justification—Particulars—Admissibility.—In an action for libel, where the defendant pleads justification, the defendant's particulars of justification cannot be objected to on an interlocutory application in chambers, merely on the ground of inadmissibility in evidence, the question of admissibility in evidence being for the judge at the trial and not for the master or judge at chambers.—GODMAN *v.* TIMES PUBLISHING CO., *C.A.*, 606; 1926, 2 K.B. 273.

LICENCE:—

Licence to Construct and Work Railway over Land of Licensor—Removal of Railway so Constructed—Power to Compel Removal on Termination of Licence—Contract—Breach—Anticipatory Breach.—A licence to construct and work a railway over the land of the licensor does not import an implied obligation on the part of the licensee to remove the structures at the termination of the licence. Nor can the licensor, in the absence of express contract to that effect, compel the licensee to remove such structures.—NEVER-STOP RAILWAY *v.* BRITISH EMPIRE EXHIBITION, *Lawrence, J.*, 735; 1926, 1 Ch. 877.

LICENSING LAW:—

"*Wincarnis with Quinine*"—*Whether a Wine or Spirituous Liquor—Licensing (Consolidation) Act*, 1910, 10 *Edw.* 7 *and* 1 *Geo.* 5, *s.* 65.—Whether the addition of quinine to wine makes the mixture cease to be a wine within the meaning of the Licensing Act, so as to exempt the seller from holding a justice's licence, depends on the proportion of the mixture.—SHARP *v.* SPARKES, *K.B.D.*, 1069.

LIGHT.—See Easement.

LIMITATIONS, STATUTE OF:—

Mortgage of Reversionary Interest—Mixed Fund—Real Property Limitation Act, 1874, 37 & 38 *Vict.*, *c.* 57, *s.* 8.—A mortgagee of a reversionary interest in a mixed fund, where no interest was paid on the mortgage, and no acknowledgment given for upwards of twelve years, loses his right against the realty, because of s. 8 of the Real Property Limitation Act, 1874, but is still entitled to enforce his security against such part of the fund as consists of personalty.

In re Fox, 1913, 2 Ch. 75, and *In re Witham*, 1922, 2 Ch. 113, followed.

The fact that the mortgage contained a provision for capitalization of interest did not prevent the claim against the realty from being barred by lapse of time.

In re Morris, 1922, 1 Ch. 126, distinguished.—*Re* JAUNCEY; BIRD *v.* ARNOLD, *Russell, J.*, 527; 1926, 1 Ch. 471.

And see Crown, Lunacy.

LOCAL GOVERNMENT:—

1. *Borough Councillor—Contract with Company—Share or Interest in Contract—Penalty—Municipal Corporations Act*, 1882, *ss.* 12, 14.—An alderman of the City of Leeds was a shareholder and managing director of a company having contracts with the Leeds Corporation.

Held, that he was not disqualified under the Municipal Corporation Act, 1882, s. 12, from acting as alderman by reason of his being managing director of the contracting company.—LAPISH *v.* BRAITHWAITE, *H.L.*, 365; 1926, A.C. 275.

2. *Fire Brigade—Fire Outside Borough—Services rendered at request of Tenant of Premises—Liability of Tenant to pay for Services—Town Police Clauses Act*, 1847, 10 & 11 *Vict.*, *c.* 89, *ss.* 32, 33.—By s. 32 of the Town Police Clauses Act, 1847, corporations are authorised to purchase or provide fire engines and other appurtenances for use in case of fire. By s. 33, "The [corporation] may send such engines, with their appurtenances and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the [corporation] a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen, and in case of any difference between the [corporation] and the owner of the said land or buildings, the amount of the said expenses and charge, as well as to propriety of sending the said engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the [corporation] as damages." Section 33 of the Town Police Clauses Act, 1847, does not take away the common law right of a local authority to contract with reference to the use of its fire brigade. Where, therefore, a local authority renders services with their fire brigade at the request of a tenant on whose premises, situated beyond the limits of the district, a fire has broken out, they are entitled to recover from the tenant the cost of the services so rendered.—DAVENTRY CORPORATION *v.* NEWBURY AND WRIGHT, *K.B.D.*, 428; 1926, 1 K.B. 383.

And see Bridge, Highway, Rates and Rating.

LUNACY:—

Person Certified to be Insane—Reception Order made by Magistrate—Removal and Detention in Asylum for several years—Escape—Action against Doctor for negligent Certification—Finding that Patient was sane at date of Certification—Damages — Action statute-barred — Plaintiff not within

exception of "person non compos mentis"—*Limitation Act*, 1623, 21 *Jac.* 1, *c.* 16, *ss.* 3, 7.—A person certified to be a lunatic and removed to and detained in a lunatic asylum for several years, ultimately escaped, and brought an action against the doctor, who had certified him to be insane, for damages for negligent certification. The jury found that the plaintiff was sane when so certified, and awarded damages. The defendant pleaded that the action was barred by over six years' lapse of time since the certification.

Held, that the action was statute-barred as the plaintiff having been found to be sane was not within the exception of "persons *non compos mentis*" for the purposes of s. 7 of the Limitation Act, 1923, though actually detained and under treatment as a lunatic.—HARNETT *v.* FISHER, *C.A.*, 917.

MARINE INSURANCE:—

Policy on Cargo—Non-disclosure of Material Facts—Pre-carriage—Damage to Celluloid by Salt Water, and Exposure on Open Quay—Waiver—Marine Insurance Act, 1906, 6 *Edw.* 7, *c.* 41, *s.* 18 (3).—In an action on a policy of marine insurance on a cargo of celluloid shipped from America to France, the defendants pleaded that the assured had wrongfully concealed certain facts material to be disclosed to them. The cargo had in fact been previously carried, partly on deck, in a protracted voyage from New York to Halifax, where, the vessel being unable to proceed further, it was unloaded and part put in a warehouse, and the rest left on the open quay, exposed to severe weather, for over two months.

Held, that these facts were material to be disclosed to the underwriters, and as they were not disclosed, and there was no waiver of non-disclosure, the policy was vitiated.

Boyd v. *Dubois*, 3 Camp. 133, disapproved.

Carr v. *Montefiore*, 5 B. & S. 408, followed.

Decision of Branson, J., affirmed.

GREENHILL *v.* FEDERAL INSURANCE CO., *C.A.*, 565.

MASTER AND SERVANT:—

Wages—Piece-work—Agreed Price for Complete Piece of Work—Agreed Variations for Defective Work—Deductions from Wages—Truck Act, 1896, 59 & 60 *Vict. c.* 44, ss. 2, 4.—Section 2 (1) of the Truck Act, 1896, enacts: "An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman, for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless" certain conditions requiring notice of the terms of such a contract or as to its being in writing and signed by the workman, are fulfilled.

By s-s. (2) the making of deductions is prohibited unless regulated in pursuance of such a contract, and particulars in writing which showed the reason for such deductions are supplied to the workman.

Under s. 4 it is an offence for an employer to make an agreement, or to make any deduction, contrary to the Act.

The appellant was employed by the respondents as a piece-worker only, to mould iron pipes. His contract of remuneration provided for the payment of 5¾d. for non-defective pipes and for the payment of less sums for defective pipes, the amount varying according to the defect. In respect of certain defective pipes the appellant received less than the 5¾d. He thereupon preferred an information against the respondents alleging that they had made deductions from his wages, and that such deductions were contrary to the Truck Act, 1896. The information was dismissed.

Held, on appeal, that the variations from the agreed price were clearly deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer" within s. 2 (1) of the Truck Act, 1896, and that the agreement was a clear attempt to evade the Act.—PRITCHARD *v.* JAMES CLAY (WELLINGTON) LTD., *K.B.D.* 266; 1926, 1 K.B. 238.

MINES AND MINERALS:—

Mineral Lease—Boundaries—Position of "Fault"—Riparian Owner—Water Abstracted for purposes unconnected with Riparian Tenement—Water Diverted from River without Restoration—Extraordinary Purposes—Demise of Surface for purposes of Mineral Railway Only—Power to Lay Water-pipe under Surface for purposes of a Colliery.—The occupation of a strip of land upon which a mineral railway is constructed up to a river does not convert the site of colliery works a mile away, to which the railway runs into, "a riparian tenement," because the expression connotes in addition to contact with the river reasonable proximity to the river bank.

A riparian owner may take and use water for extraordinary purposes if such user is reasonable and connected with the riparian tenement, provided the water so taken is restored substantially undiminished in volume and unaltered in character, but he must not take and use the water for purposes unconnected with the riparian tenement, and to convert it into steam without restoring any of it is a wholly unauthorized use.

MacCartney v. *The Londonderry, etc., Railway*, 1904, A.C. 301, applied.

In such a case it is not necessary to show that a lower riparian owner has suffered or would inevitably suffer damage.

A demise of the "surface" of the land for the laying of a mineral railway does not preclude the laying of a watermain no deeper than an ordinary drain or water pipe.—ATTWOOD *v.* LLAY MAIN COLLIERIES, LTD., *Lawrence, J.*, 265; 1926, 1 Ch. 444.

MISTAKE:—

Mistake of Fact—Cheque Paid through Fraud or Third Party—Recovery from Payee—Available Means of Knowledge—Which of Two Innocent Parties to Suffer.—Money paid by mistake as the result of fraud by a third party can be recovered by the payor from the payee even after the latter has given credit for the money to the fraudulent third party. It is immaterial in such a case that the payor had the means of knowledge and did not avail himself of it.

Kelly v. *Solari*, 9 M. & W. 58, followed.

R. E. JONES, LTD. *v.* WARING & GILLOW, *H.L.*, 756; *A.C.*, 670.

MONEYLENDERS:—

Transaction Harsh and Unconscionable—Re-opening of Whole Transaction—Previous Transaction subject of Consent Judgment—Effect of Judge's Order—Moneylenders Act, 1900, 63 & 64 *Vict. c.* 51, *s.* 1.—At the hearing of an action brought by a moneylender on two promissory notes, Finlay, J., ordered that the whole of the transactions between the parties should be reopened and an account taken between them, and he referred the matter to a master to determine the amount due to the plaintiff on the basis that he was entitled to interest at the rate of 20 per cent. per annum. There had been a previous moneylending transaction between the parties which had resulted in a judgment for the plaintiff by consent. The inquiry was heard before a master, who gave a certificate on the basis ordered by the judge. On the matter coming before Finlay, J., on the master's certificate, Finlay, J., held that he had no jurisdiction to order the reopening of the previous moneylending transaction, and he gave judgment on the basis that the previous transaction was not reopened.

Held, that Finlay, J., had no power to decide that he had no jurisdiction to order the reopening of the previous transaction. Having made the order, and the order not having been set aside, Finlay, J., was bound by it, whether it was right or wrong, and he ought to have given judgment on the basis that both transactions were reopened.

Decision of Finlay, J., 70 SOL. J. 138, reversed.—COHEN *v.* JONESCU, *C.A.*, 386; 1926, 2 K.B. 1.

MORTGAGE:—

Emergency Powers—Sale by Mortgagee without Leave of Court—Mortgagee in Possession—Courts (Emergency Powers) Act, 1914, 4 & 5 *Geo.* 5, *c.* 78, *s.* 1, *s-s.* (1) (*b*)—*Purchaser for Value without Notice—Conveyancing Act*, 1881, 44 & 45 *Vict. c.* 41, *s.* 21, *s-s.* (2)—*Waiver of Benefit of Act—Laches.*—The contention that upon the true construction of the Courts (Emergency Powers) Act, 1914, a mortgagee is entitled to realise his security by sale, provided only he is in fact in possession, even though wrongfully, is ill-founded.

A purchaser who completed his purchase from a mortgagee who, he knew from the replies to requisitions, had gone into possession after the commencement of the Courts (Emergency Powers) Act, 1914, without the leave of the court, is not a *bona fide* purchaser for value without notice.

If the purchaser wished to rely on a waiver of the illegality by the vendors, it was his business to discover that such waiver had, in fact, taken place, and he was not entitled to assume a waiver.

Section 21, s-s. (2), of the Conveyancing Act, 1881, does not protect such purchasers.

The defendant purchasers were held to be only entitled as transferees *pro tanto* from their mortgagee vendor of the mortgage debt in proportion to the various purchase prices paid by them.

In re Provident Association of London and Gollogaby's Contract, 1917, 1 I.R. 240, commented upon.—ANCHOR TRUST CO. *v.* BELL, *Lawrence, J.*, 668; 1926, 1 Ch. 805.

MOTOR CAR :—

Brakes—Two acting on one Brake Drum—Independent Brakes—Motor Car (Use and Construction) Order, 1904, *Art.* 2 (4).—Where a hand brake and a foot brake are applied to the same brake drum through independent brake blocks, the brake drum is not to be regarded as part of the brake but as part of the wheel. The two brakes are independent.—BOWEN *v.* WILSON, *K.B.D.*, 1161.

NAME AND ARMS CLAUSE.—See Will.

NUISANCE :—

Tree Overhanging Highway—Fall of Branch—Liability for Damage—The Principle of Rylands *v.* Fletcher.—A beech tree, growing on private land, overhung a highway. Owing to a latent defect, which was not discoverable by any reasonably careful inspection, a branch of the tree fell on and damaged a motor coach passing on the highway.

Held, that as the growing of a tree was a natural use of the soil, the principle of *Rylands* v. *Fletcher* and *Humphreys and Cousins* did not apply; that the tree was not *per se* a nuisance so as to make the owner liable in damages unless he knew or ought to have known that it was dangerous: and that there was no obligation on the owner to provide supports for it until it became apparent on a proper inspection that nature could no longer be relied on to support it.

Rylands v. *Fletcher*, 1868, L.R. 3, H.L. 330; and *Humphreys* v. *Cousins*, 2 C.P.D. 239, distinguished.—NOBLE *v.* HARRISON, *K.B.D.*, 691; 1926, 2 K.B. 332.

PARTITION :—

Stay—Persons interested in more than one-half of the Property—Trustees for Sale under Will—Whether such Persons are interested—Law of Property Act, 1925, 15 *Geo.* 5, *c.* 20, 1*st Sched., Pt. IV, para.* 1, *sub-clause* 11 (i) *and* (iv).—Trustees for sale under a will of an undivided share sufficiently represent that share, apart from the persons beneficially interested therein, for the purposes of the partition clauses.—DARLINGTON *v.* DARLINGTON, *Romer, J.*, 775.

PATENT :—

Comptroller—Refusal to Register Design—Previous Refusal to Register Similar Design—No Good Ground for Present Refusal—Patents and Designs Act, 1907, 7 *Edw.* 7, *c.* 29, *s.* 56, *and* 69 (2)—*Application to Review Decision of Comptroller-General of Patents.*—In granting or refusing an application to register a design, the fact that it is identical with a design which has already been refused registration is not a good ground for refusal, because the test to be applied is the test of novelty which is to be determined by publication, and also the fact that s. 56 of the Patents and Designs Act, 1907, deals only with refusal by reason of identity with a design already registered to some extent and by inference supports this view.—*Re* BRAMPTON BROTHERS' APPLICATION, *Tomlin, J.*, 184; 1926, 1 Ch. 255.

PETITION :—

Payment Out—Money representing Proceeds of Sale of Leaseholds—Affidavit of No Incumbrances.—Where on a petition for payment out of the proceeds of sale of leaseholds certain incumbrances are disclosed without any statement that there are no others, there ought to be an affidavit of no incumbrances except those which have been disclosed.—*Re* LADYMAN, *Lawrence, J.*, 485.

POOR LAW :—

1. *Relief—Goods Supplied to Pauper—Cost—Recovery by Guardians from Pauper—Poor Law Amendment Act*, 1834, 4 & 5 *Will.* 4, *c.* 76, *s.* 58.—Guardians who supply goods to a pauper by way of ordinary poor law relief have no right, either at common law or by statute, to recover from the pauper afterwards the value of the goods so supplied.

Decision of the Divisional Court, 70 SOL. J., 566, reversed.

Birkenhead Guardians v. *Brooke*, 95 L.T. 359, overruled.—PONTYPRIDD GUARDIANS *v.* DREW, *C.A.* 795.

2. *Settlement—Illegitimate Child—Residence apart from Mother—Marriage of Mother—Derivative Settlement—Divided Parishes and Poor Law Amendment Act*, 1876, *ss.* 34, 35.—An illegitimate child, though living apart from its mother, has the same settlement as the mother, and if, before the child attains the age of sixteen, the mother marries, the child takes the mother's settlement derived from her husband. The third paragraph of s. 35 of the Divided Parishes and Poor Law Amendment Act, 1876, has no application to a child under the age of sixteen.—WYCOMBE GUARDIANS *v.* BARTON-UPON-IRWELL GUARDIANS, *H.L.* 1180.

3. *Guardians—Surcharge—Gratuities—Integral Part of Emoluments—Disallowance—Superannuation Fund—Local Authorities (Expenses) Act*, 1887, 50 & 51 *Vict., c.* 72, *s.* 3; *Poor Law Officers' Superannuation Act*, 1896, 59 & 60 *Vict., c.* 50, *ss.* 3, 19; *Births and Deaths Registration Acts of* 1836, 6 & 7 *Will.* 4, *c.* 86, *and* 1874, 37 & 38 *Vict., c.* 88; *Poor Law Amendment Acts of* 1834, 4 & 5 *Will.* 4, *c.* 76, *and* 1844, 7 & 8 *Vict., c.* 101, *s.* 32; *Public Health Act*, 1875, 38 & 39 *Vict., c.* 55, *s.* 247.—In assessing the amount of a district registrar's contributions to a superannuation fund, the gratuities which he had received from the Board of Guardians with the sanction of the Local Government Board, now the Ministry of Health, became part of his emoluments, and as such, part of the basis on which the payments of his superannuation allowance were to be made. The district auditor could not disallow such payments or surcharge on the guardians.—THE KING *v.* GRAIN, *Ex parte* WANDSWORTH GUARDIANS, *K.B.D.* 1242.

PRACTICE :—

1. *Parties—Claim to Fund in Hands of the Administrator of Hungarian Property—Whether Attorney-General Necessary.*—The Attorney-General is not a necessary party to an action against the Administrator of Hungarian Property in which the substantial claim was against the fund, and a subsidiary claim for a declaration as to nationality was added.

Baron Reitzes de Marienwert v. *The Administrator of Austrian Property*, 1924, 2 Ch. 295 distinguished.—GROEBEL *v.* ADMINISTRATOR OF HUNGARIAN PROPERTY, *Romer, J.* 345.

2. *Pleading—Action against Partners—Separate Defences by each Partner—Defence of One Defendant Effectual—Facts Proved showing Failure of Cause of Action—Defence available to, though not Pleaded by, other Defendants—Order XIX, r.* 15.—In an action against joint contractors, where the defendants set up separate defences, and one defendant only pleads facts which, when proved, show that the plaintiff is not entitled to recover, and that defendant is entitled to judgment, the defence is available to all the defendants, though not pleaded by the others, and the action fails altogether.—PIRIE *v.* RICHARDSON, *C.A.* 1023.

3. *Representative Action—Action against an Unregistered Association—Property Vested in Trustees—Joinder of Trustees as Defendants—Enforcement of Liability—Rules of the Supreme Court, Ord. XXV, r.* 4.—In order to enforce a liability incurred by an unregistered association of individuals, the trustees of the association, in whom the property and assets of the association are vested, can be joined as defendants in an action against the managing committee of the association.—IDEAL FILMS LTD. *v.* RICHARDS, *C.A.* 1138.

PRINCIPAL AND AGENT :—

Commission—Sale of Lease—Restrictive Covenant—Head Landlords willing to Waive Covenant—Known to Agent but not to Lessee—Knowledge Concealed by Agent—Lessee Induced to Accept Lower Figure—Agent's Right to Commission.—An agent who, instructed to find a purchaser, and who conceals a fact from his principal, and in consequence of this concealment persuades the principal to accept a lower figure than he could otherwise have obtained for the subject-matter of the sale, is not entitled to claim his commission on the completion of the sale.—HEATH *v.* PARKINSON, *K.B.D.* 798.

PRINCIPAL AND SURETY :—

Interference with Rights of Surety—Calls on Shares—Guarantee of—Forfeiture of Shares—New Liability created—Discharge.—Where calls on shares had been guaranteed and the calls were not paid and the shares forfeited, and the articles of association of the company provided that notwithstanding forfeiture the members whose shares had been forfeited should be liable to pay calls only in respect of such shares at the time of the forfeiture, it was held that the company by forfeiting the shares had interfered with the rights of the guarantors and created a fresh liability in them, and they were accordingly discharged.

Holme v. *Brunskill*, 1877, 3 Q.B.D. 669, applied.

Ladies' Dress Association v. *Pulbrooke*, 1900, 2 Q.B. 376.—*Re* DARWIN AND PEARCE, *Lawrence, J.*, 965.

PROBATE :—

1. *Practice—Costs—Executors—Proof of Will in Solemn Form—Codicil propounded but Found not duly Executed—Plea of Undue Influence—Right of proving Executors to General Costs of Action as between Solicitor and Client out*

of Estate—Defendants to pay Costs of Certain Issues—O. 65, r. 1.—The executors of a testator propounded his last will and a codicil thereto. The testator's widow, who took no benefit under either, entered a caveat against probate of both, and the plaintiffs brought this suit to have the same proved in solemn form. The defendant pleaded that the testator was not *compos mentis* when he signed the codicil and that it was procured by the undue influence of a woman who took under it. The jury found that the will was duly executed, but the codicil was not, and that the testator was not of sound mind when he signed it. The plea of undue influence was abandoned. Wright, J. pronounced for the will and against the codicil, but gave the defendants the general costs of the action, except so far as they were increased by the plaintiffs having to prove the will in solemn form and on the issue of undue influence.

Held, on appeal, that the plaintiffs, as executors, were entitled to their costs as between solicitor and client out of the estate under the first proviso in O. 65, r. 1, and that the defendants ought to have their general costs as between party and party, other than the costs of the above two issues, and must pay to the plaintiffs their costs of the said issues.

Spiers v. *English*, 1907, P. 124, applied.

Decison of Wright, J., reversed.—*Re* PLANT, *C.A.*, 605; 1926, P. 139.

2. *Will and Codicil dealing with English Estate—Later Will dealing with Estate in United States and Cuba—The Three Instruments admitted to Probate—Examined and Sealed Copy of American Will retained in Registry and Original of American Will to be handed out to the Executrix thereof.*—Where a testator executed a will and codicil dealing with his English estate, and later executed a will dealing with his estates in America, the court directed that the three instruments should be admitted to probate here, but that the document to be retained in the Registry should be an examined and sealed copy of the American will, and that the original of that will should be handed out to the widow as sole executrix.—IN THE ESTATE OF WHITE TODD, *P.D.*, 671; 1926, P. 173.

PUBLIC AUTHORITIES PROTECTION:—

1. *Medical Officers sued for Negligence by Widow—Time within which Action may be brought—Fatal Accidents Act*, 1846, 9 & 10 *Vict.*, *c.* 93, *s.* 3—*Public Authorities Protection Act*, 1893, 56 & 57 *Vict.* c. 61, *s.* 1 (*a*).—A widow brought an action under Lord Campbell's Act, 1846, against two medical officers for negligence which, she alleged, caused the death of her husband. The Defendants, who were employed by the Borough of Croydon, pleaded the Public Authorities Protection Act, 1893. The writ was issued within the time limit of twelve months allowed by Lord Campbell's Act, but outside the six months' limit under the Public Authorities Protection Act.

Held, on the authorities, that the plaintiff was entitled to bring her action within the time limit of twelve months allowed by Lord Campbell's Act, 1846, and that her right of action was not barred by the Public Authorities Protection Act, 1893.—VENN *v.* TODESCO, *K.B.D.*, 709; 1926, 2 K.B. 227.

2. *Municipal Corporation—Water Undertaking—Statutory Authority—Laying Water Mains—Injury to Gas Pipes—Continuing Breaches of Duty—Action against Corporation—Six Months . . . after the Act, Neglect or Default complained of—Public Authorities Protection Act*, 1893, 56 & 57 *Vict.*, c. 61, *s.* 1 (*a*).—The defendant corporation, acting under statutory authority, broke up certain roads in order to lay water mains. In those roads there were gas pipes the property of the plaintiff company, lawfully placed therein. The corporation removed the soil supporting the plaintiff's gas pipes, and so negligently replaced it that in consequence of subsidence caused by their negligence, fractures were caused in the gas pipes. The work of the corporation was carried out between March and September, 1923. Most of the fractures complained of occurred in July to September, 1924. The plaintiffs issued their writ in December, 1924. The defendant corporation relied on the Public Authorities Protection Act, 1893, s. 1, and said that the action was barred because it was commenced more than six months after September, 1923, which was the latest date on which the act, neglect or default complained of, occurred.

Held, that the plaintiffs had proved continuing breaches of duty on the part of the defendants with the resulting damages down to a time within six months before the commencement of the action. Therefore the action was not barred by the Public Authorities Protection Act, 1893.—HUYTON AND ROBY GAS CO. *v.* LIVERPOOL CORP., *C.A.*, 226; 1926, 1 K.B. 146.

3. *Public Official—Medical Officer of Health—Action for Negligence—Limitation of Time—"Six Months . . . after the Act, Neglect or Default complained of"—Public Authorities Protection Act*, 1893, 56 & 57 *Vict.*, *c.* 61, *s.* 1 (*a*).—By s. 1 of the Public Authorities Protection Act, 1893: "Where . . . any action . . . or other proceeding is commenced . . . against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty or authority . . . (*a*) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of the continuance of injury or damage, within six months next after the ceasing thereof."

Held, that the period of six months fixed by the section as the period within which an action must be brought in respect of any act, neglect or default in the execution of any public duty, runs from the date of the act, neglect or default complained of, and not from the accrual of the cause of action.

Carey v. *Mayor of Bermondsey*, 1903, 20 T.L.R. 2; 67 J.P. 111, 447, followed.

Decision of the Divisional Court, 41 T.L.R. 567; 89 J.P., 179, affirmed.—FREEBORN *v.* LEEMING, *C.A.*, 264; 1926, 1 K.B. 160.

RAILWAY:—

Grouping — Amalgamation — Absorption — Absorption Scheme—Transfer of Liabilities—Debenture-holders—Stock in New Company—Substitution for Stock in Absorbed Company—Arrears of Interest—Judgment—Whether Judgment Debt included in Absorption Scheme—Railways Act, 1921, 11 & 12 *Geo.* 5, *c.* 55, *ss.* 4, 5, 10.—In 1913 the plaintiff purchased certain debentures in the F. Railway Company, with all arrears of interest thereon. He also took an assignment of a judgment which had been obtained against the company by his predecessors in title in 1912 for arrears of interest on the same debentures. Afterwards the F. Railway Company was absorbed into the Southern Group under the Railways Act, 1921. The absorption scheme provided for the issue of stock in the Southern Group in lieu of and in exchange for the stock of the absorbed company and that the "persons who by virtue of this scheme become the registered holders of stock of the company shall (subject to the provisions of this scheme) accept and be deemed to have accepted the stock allocated to them under this scheme in substitution for the stock of the vested company held by them, and in satisfaction of all claims thereunder including any arrears of interest." The plaintiff received his proportion of preference stock in the Southern Group in exchange for his holding of debenture stock in the absorbed company.

Held, that the words "all claims thereunder including any arrears of interest" were wide enough to include the judgment debt, together with the statutory interest on the judgment and the costs awarded under the judgment in question.

Decision of Greer, J., varied.—AMAN *v.* SOUTHERN RAILWAY, *C.A.*, 42; 1926, 1 K.B. 59.

And see Bridge.

RATES AND RATING:—

1. *Assessment—Gross Estimated Rental—Landlord's Rates—Payment by Tenant in consideration of Reduced Rent—Effect on Assessment—Union Assessment Act*, 1862, 25 & 26 *Vict.*, *c.* 103, *s.* 15—*Newcastle-upon-Tyne Corporation (Rates) Act*, 1919, 9 & 10 *Geo.* 5, *c.* lxix, *s.* 10.—By a section of a local Act of Parliament, one-eighth of the consolidated rate was to be borne by the owners of property, but the whole rate was in the first instance to be paid by the occupiers, who were entitled to deduct the landlord's one-eighth from the rent.

The appellant was the tenant of a certain hereditament which was rated at £100 gross estimated rental and £83 rateable value. Before 1st April, 1923, the appellant paid a rent of £100, and deducted therefrom £7, being the landlord's one-eighth of the consolidated rate. It was then agreed that his rent should be reduced to £93 in consideration of his paying the whole of the consolidated rate, without deduction from his rent.

Held, (1) that the £7 was not deductible from the reduced rent of £93 as a "usual tenant's" rate, within the meaning of s. 15 of the Union Assessment Committee Act, 1862,

in arriving at the gross estimated rental of the hereditament; and (2) that the proper figure for gross estimated rental was £100 and not £93.

Decision of the Divisional Court, affirmed.—HAYTOR *v.* NEWCASTLE-UPON-TYNE ASSESSMENT COMMITTEE, *C.A.*, 43; 1926, 1 K.B. 178.

2. *Non-payment of Sewer Rate—Less than £20—Distress—Question of Costs—Distress (Costs) Act*, 1817, 57 *Geo.* 3, *c.* 93, *s.* 1—*Distress (Costs) Act*, 1827, 7 & 8 *Geo.* 4, *c.* 17—*Sewers Act*, 1833, 3 & 4 *Will.* 4, *c.* 22, *s.* 55.—Where a distress has been levied in respect of a sewer rate of less than £20, the costs of levying the distress were limited by the provisions of the Distress (Costs) Acts, 1817 and 1827.—REX *v.* NORFOLK JUSTICES, *ex parte* PORTER, *K.B.D.* 1198.

3. *Special Expenses—Sewerage—Charge on Land—Poor Rate—Vendor and Purchaser—Specific Performance—Public Health Act*, 1875, 38 & 39 *Vict.*, *c.* 55, *ss.* 229, 230, 233 *and* 257.—The separate rate referred to in s. 230 of the Public Health Act, 1875, for raising the special expenses referred to in s. 229 of that Act, does not create a charge on the land, but is merely an outgoing in respect thereof, payable by the occupier, and these are not the "expenses" referred to in *s.* 257 of the same Act.

Stock v. *Meakin*, 1900, 1 Ch. 683, distinguished.—CALDER'S YEAST CO. *v.* STOCKDALE, *Lawrence, J.*, 1043.

RESTRAINT OF TRADE:—

1. *Agreement as to Soliciting Customers—Reasonableness—Severability.*—A service agreement which shows that it is intended to apply to the soliciting of future customers who deal in the goods dealt in by the society entering into the agreement at the time when the employee of the said society ceases to be in their service is too wide.

Konski v. *Peet*, 1915, 1 Ch. 530, followed; *Dubowski and Sons* v. *Goldstein*, 1896, 1 Q.B. 478, not followed.—EAST ESSEX FARMERS LTD. *v.* HOLDER, *Lawrence, J.*, 1001.

2. *Reasonableness — Negative Stipulation — Master and Servant—Covenant not to enter into other Employment or be Interested in the Similar Business of Another Company—Injunction—Damages.*—Where a company covenanted to employ an inventor and the inventor agreed to serve for a period of five years and covenanted during that time not to enter other employment or be interested in the similar business of another company, and within the period left the service of the company and entered the service of another company carrying on a similar business.

Held, that an injunction could not be granted restraining the inventor continuing in the employment of the new company.

Whitwood Chemical Company v. *Hardman*, 1891, 2 Ch. 416; *Ehrman* v. *Bartholomew*, 1898, 1 Ch. 671; and *Chapman* v. *Westerby*, 1913, W.N. 277, followed.

Held, further that an injunction would be granted restraining the inventor until the end of the period from being interested in the business of the new company, and an enquiry directed as to the damages caused by the inventor's breach of the agreement.—RELY-A-BELL BURGLAR AND FIRE ALARM CO. *v.* EISLER, *Russell, J.*, 669; 1926, 1 Ch. 609.

SALE OF GOODS:—

1. *Sale by Auction—Value over £10—Note or Memorandum in Writing—Parties Referred to in Auctioneer's Book—Signature—Printed Name—Whether Sufficient—Sale of Goods Act*, 1893, 56 & 57 *Vict. c.* 71, *s.* 4 (1).—The existence of a "knock-out" at an auction sale in respect of certain goods does not afford a defence to an action for breach of contract to deliver those goods. There is a signature and note or memorandum in writing sufficient to satisfy s. 4 (1) of the Sale of Goods Act, 1893, if the name of the owner of the goods is printed on the catalogue, and the name of the purchaser is written by his authority by the auctioneer against the description of the goods bought.—COHEN *v.* ROCHE, *K.B.D.* 942.

2. *Shipbuilding Company—Partly Constructed Vessel—Agreement to Build—Appointment of Receiver—When Property Passes—Sale of Goods Act*, 1893, 56 & 57 *Vict.*, *c.* 71, *ss.* 16, 18, *r.* 5 (1).—Where at the date of the appointment of a receiver of a shipbuilding company a certain vessel was in course of construction by the company under an agreement to pay for it by instalments which provided, *inter alia*, that the materials should be inspected and passed from time to time by the agent of the purchaser, and also that after payment of the first instalment on account of the purchase price the vessel and all material things appropriated for her, subject to the lien of the builders for lawful purchase money, became the absolute property of the purchasers, and that if default was made in payment of instalments and builders' agent gave notice to rescind, thereupon the vessel should become their sole property, and two instalments were paid before the debenture-holders' action started.

Held, that the property in the uncompleted vessel had passed to the purchasers, but not the property in any materials passed for inserting in the vessel which had not in fact been so inserted therein.

Sir James Laing & Sons v. *Barclay Curle & Co.*, 1908, A.C. 35, applied.—*Re* BLYTH SHIPBUILDING AND DRY DOCKS CO., *Romer, J.*, 283; 1926, 1 Ch. 494.

SETTLED LAND:—

1. *Jointure Rent-charge—Trustees for Sale Subject to—Compound Settlement—Person having Powers of Tenant for Life—Settled Land Act*, 1884, 47 & 48 *Vict.*, *c.* 18, *s.* 7—*Effect of Order under—Settled Land Act*, 1925, 15 *Geo.* 5, *c.* 18, *ss.* 1, 19, 20, 117, *Sched. II, para.* 1—*Law of Property Act*, 1925, 15 *Geo.* 5, *c.* 20, *s.* 29, *s-s.* (4), *s.* 205, *s-s.* (1) (xxix).—The expression "an immediate binding trust for sale," in s. 205, s-s. (1) (xxix), of the Law of Property Act, 1925, means that the entire land which is the subject-matter of the settlement is to be subject to the trust for sale, and to be bound by it. Orders made under s. 7 of the Settled Land Act, 1884, giving a person the power to exercise the powers of a tenant for life, do not alter or affect the right of such person to have a vesting deed executed if otherwise entitled thereto under s. 20, s-s. (1) (viii), of the Settled Land Act, 1925.—*Re* LEIGH'S SETTLED ESTATES, *Tomlin, J.*, 758; 1926, 1 Ch. 852.

2. *Limited Owners with Powers of Tenant for Life—Person Entitled to Income of Land subject to a Trust for Accumulation of Income—Trustees with Powers of a Tenant for Life—Settled Land Act*, 1925, 15 *Geo.* 5, *c.* 18, *s.* 20, *s-s.* (1) (viii) *and s.* 23.—Where trustees were, in certain events which happened, to enter into possession or receipt of the income of the settled estate and manage it with power to deal therewith as absolute owners, but to pay two-thirds of the net income to A and accumulate the remaining one-third,

Held, that A was not a person having the powers of a tenant for life within s. 20 (1) (viii) of the Settled Land Act, 1925, but that the trustees were the persons having those powers by virtue of s. 23 of the said Act.

In re Jones, 1884, 26 Ch. D. 736, distinguished.—*Re* FREWEN, *Lawrence, J.*, 650; 1926, 1 Ch. 580.

3. *No Life Tenant—Statutory Owner with Protected Life Interest—Powers of a Tenant for Life Conferred by the Settlement on the Statutory Owner—Refusal to Exercise—No Jurisdiction to Authorise Trustees to Exercise on Behalf of Tenant for Life—Release of Powers—Effect of Release—Settled Land Act*, 1882, 45 & 46 *Vict.*, *c.* 38, *s.* 58—*Settled Land Act*, 1925, 15 *Geo.* 5, *c.* 18, *s.* 23, *s-s.* (1), *s.* 24, *s-s.* (1), *s.* 104, *s-ss.* (1), (2), *s.* 117, *s-s.* (1), *cl.* xxvi, xxviii—*Law of Property Act*, 1925, 16 *Geo.* 5, *c.* 20, *s.* 155.—There is a distinction between tenants for life and other persons such as limited owners with an estate or interest in possession who are given the powers of a tenant for life, and persons not in these categories who are nevertheless statutory owners within cl. xxvii of s. 117 (1) of the Settled Land Act, 1925, and the court cannot make an order under s. 24 (1) of the said Act authorising the trustees for these latter persons to exercise their powers in their name and on their behalf, but the court will make a declaration that upon these latter persons releasing their powers the trustees are to have such powers under s. 23 (1) (*b*), such release being effected under s. 155 of the Law of Property Act, 1925.—*Re* CRAVEN'S SETTLED ESTATES, *Astbury, J.*, 1111; 1926, 1 Ch. 985.

4. *One Settlement Existing on 1st January*, 1926—*Principal Vesting Deed—Separate Vesting Deeds—Interpretation Act*, 1889, 52 & 53 *Vict.*, *c.* 63, *s.* 1—*Settled Land Act*, 1925, 15 *Geo.* 5, *c.* 18, *ss.* 10, 35, 93, 110, *Sched.* 2, *para.* 1, *s.* 1, *s-s.* (2).—In the case of a settlement subsisting on the 1st of January, 1926, it is not necessary that the whole of the settled land should be comprised in one single principal vesting deed.

Different parcels of the settled land may be comprised in separate deeds.

No principal or other vesting deed requires to be made in respect of capital moneys subsisting on 1st January, 1926.—*Re* CLAYTON'S SETTLED ESTATES, *Russell, J.*, 427; 1926, 1 Ch. 279.

5. *Person having the Powers of a Tenant for Life—Trust during the Continuance of a Term to Pay the Income of Land to a Person during her Life—Settled Land Act*, 1925, 15 *Geo.* 5, *c.* 18, *s.* 20, *s-s.* (1) (viii).—A person entitled during a fixed term of years if he should so long live to receive the income of the land is a person having the powers of a tenant for

life under the settlement of that land within the meaning of s. 20 (1) (viii) of the Settled Land Act, 1925.—*Re* BARON WALERAN, *Clauson, J.*, 1242.

6. *Tenant for Life—Corporations—Compound Settlement—Agreement by Tenant for Life to Sell to Company—Subject to a Jointure—Agreement forming part of Compound Settlement or not—Sale by Owner of Fee Simple subject to Jointure—Settled Land Act, 1925—Effect of "Person of full Age"—Does this include a Corporation—Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 2, s-ss. (1), (5); ss. 50, 58, s-s. (1) (v)—Settled Land Act, 1925, 15 Geo. 5, c. 18, s. 1, s-s. (1); s. 19, s-s. (1); s. 20, s-s. (1) (v) (ix); s. 93—Practice—Originating Summons—Title—R.S.C. Ord. LV, r. 14A (3).*—The provisions of s. 19 (1) and s. 20 (1) of the Settled Land Act, 1925, are applicable to a corporation because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," and merely mean "not being an infant," so that they are appropriate to a corporation.

An agreement by a tenant for life to sell his life estate subject to jointure rent-charge, is not one of the documents constituting a compound settlement, having regard to s. 50 of the Settled Land Act, 1882.

Where land is settled upon a person in fee, subject to an existing jointure, such land is not limited to the person in succession within the meaning of those words in s. 2, s-s. (1), of the Settled Land Act, 1882.

The whole line of cases from *Mundy and Roper's Contract*, 1899, 1 Ch. 275, to *In re Monckton's Settlement*, 1917, 1 Ch. 224, considered and distinguished.

Land so settled upon a person in fee subject to an existing jointure comes within s. 1 (v) of the Settled Land Act, 1925, and a company to whom such persons upon whom it was settled in fee, subject to the jointure, has sold it has, by virtue of s. 20, s-s. (1) (ix), the powers of a tenant for life of it, and s. 19 (1) has no application to such a case, and such company must accordingly execute the necessary vesting deed.—*Re* EARL OF CARNARVON'S CHESTERFIELD SETTLED ESTATES, *Romer, J.*, 977.

7. *Tenant for Life and Remainderman—Repairs—Structural Repairs—Incidence of Costs—Trustee for Sale—Powers of Management—Equitable Apportionment—Jurisdiction of Court—Law of Property Act, 1925, 15 Geo. 5, c. 20, s. 28—Settled Land Act, 1925, 15 Geo. 5, c. 18, s. 102.*—The power of trustees for sale to "repair" the property is wide enough to include substantial repairs of a permanent nature, the word being associated with the word "rebuild" in s. 102 of the Settled Land Act, 1925.

Since the recent statutes trustees are not entitled to seek the aid of the court to apportion the cost of repairs on equitable principles between tenant for life and remainderman, as was done in *In re Hotchkeys*, 1886, 32 Ch. D. 408; but ought to do the repairs and use their statutory power to pay for them out of income.—*Re* GRAY: PUBLIC TRUSTEE *v.* WODEHOUSE, *Clauson, J.*, 1112.

8. *Trust for Life—Jointure Rent-charge Settled on Land by Tenant for Life—Portions Created—Sales to Purchasers Prior to 1926—Subject to the Jointure—Covenant for Indemnity—Release of Sold Lands from Portions—Trustees for Purposes of Settled Land Act, 1925—Position of Purchasers—Whether Lands Still Formed Part of the Original Settlement After Sale—Settled Land Act, 1925, 15 Geo. 5, c. 18, s. 1, s-s. (1); s. 19, s-s. (1); s. 20, s-s. (1); s. 31.*—Speaking generally, a "settlement" for the purposes of the Settled Land Act, 1925, is not a document or documents, but a state of affairs in relation to certain lands brought about or deemed to have been brought about by one or more documents, the particular state of affairs being one or more of those specified in s. 1, s-s. (1) (i) to (v), of that Act, and this being so, one document may create more than one settlement. Where parts of an estate which only became settled land on 31st December, 1925, had been sold before that date subject to jointure and portions, the court held that it could appoint separate trustees of that portion of the estate which was unsold on the 31st of December, 1925, for the purposes of the Settled Land Act, 1925.—*Re* OGLE'S SETTLED ESTATES, *Romer, J.*, 953.

SHIPPING :—

1. *Bill of Lading—Hague Rules, 1921—Theft of Goods—Liability of Shipowner.*—Where a bill of lading for the carriage of goods by sea is made subject to the Hague Rules, 1921, there is not only a general duty to take care imposed on the shipowner, but also a special care to see that the watch placed over the goods is vigilantly carried out.—CITY OF BARODA *v.* HALL LINE, *K.B.D.*, 877.

2. *Charter-party—Cargo—Discharge—Custom of the Port—"Alongside" the Steamer—Construction—Liability of Charterer.*—The plaintiffs, who were the owners of the s.s. *O*, chartered that steamer to the defendants to carry a cargo of timber from the Baltic to Hull. A clause in the charter-party provided that: "The cargo to be loaded and discharged with customary steamship dispatch as fast as the steamer can receive and deliver during the ordinary working hours of the respective ports, but according to the custom of the respective ports . . . the cargo to be brought to and taken from alongside the steamer at the charterer's risk and expense as customary."

The s.s. *O* duly discharged her cargo of timber at Hull, but the defendants did not take any of the cargo from alongside the steamer and the plaintiffs were obliged to remove the cargo from alongside the steamer and place it on bogies, and they brought an action to recover from the defendants the cost of doing so. The defendants relied on the above clause and refused to pay on the ground that by the custom of the port of Hull, the expense in question should be borne by the shipowners. The shipowners contended that in spite of that custom, by the language of the clause above mentioned, the expense in question was thrown on the charterers.

Held, that having regard to the decision of the House of Lords in *Palgrave, Brown & Sons, Ltd.* v. *Owners of the s.s. Turid*, 1922, 1 A.C. 397, and that of the Court of Appeal in *Holman* v. *Wade, Times*, 11th May, 1877, the custom relied on by the charterers was inconsistent with the provisions of the charter-party and the plaintiffs were entitled to recover.

Decision of Greer, J., 1925, 41 T.L.R. 546, and 30 Com. Case, 271, affirmed.—REDERI AKTIEBOLAGET ACOLUS *v.* W. N. HILLAS & CO., *C.A.*, 109.

3. *Charter-party—Detention of Ship—Port of Call—Ship to await Orders as to Port of Discharge—Neglect by Charterers to give Orders—Agreed Rate for Detention—Claim for Damages.*—The plaintiffs, the shipowners, chartered a ship to the defendants, to carry a cargo of grain. The charter-party provided that when loaded the ship was to proceed to a named port of call and there await orders as to the port of discharge. It further provided that "orders as to port of discharge are to be given to the master within twenty-four hours after receipt by consignees (the charterers) of master's telegraphic report . . . of his arrival at the port of call, and for any detention waiting for orders, after the aforesaid twenty-four hours, the charterers or their agents shall pay to the steamer 30s. per hour . . ." The steamer was detained at the port of call for over thirteen days. The sole cause of the detention was the deliberate refusal of the charterers to name a port of discharge. It suited their business arrangements to keep the steamer at the port of call. They admitted liability and paid to the shipowners a sum calculated at 30s. an hour for the period of detention, less twenty-four hours. The shipowners treated the contract as still being in operation during the period of detention, but they contended that the detention clause had no application in the circumstances which had happened, and that they were entitled to damages at common law.

Held, that the master having elected to wait at the port of call until orders to proceed were received, was only entitled to recover as damages 30s. per hour as provided in the charter-party, and that the charterers were not entitled to deduct a commission on the amount payable by them as damages for detention.—ETHEL RADCLIFFE STEAMSHIP CO. *v.* BARNETT, *C.A.*, 484.

4. *Charter-party—"Full and Complete Cargo"—Delay in Loading—Demurrage—Breach of Obligation to Load Full Cargo—Liability for Dead Freight.*—A charter-party, dated 26th May, 1923, provided that a ship should load a full and complete cargo of wood goods and thereafter proceed to one of certain specified English ports. The charter-party also provided for loading at an agreed rate and for the payment of demurrage in case of delay. When the charter-party was entered into it was contemplated that the ship would arrive at the loading port in July in time to load a full summer cargo. But the ship was detained, through no fault of her own, owing to a dock strike in London. The ship arrived at the loading port on 3rd October. If she had loaded the cargo at the rate specified in the charter-party she would have loaded a full summer cargo in time to arrive in England before the winter loading regulations were in force, which compelled her to load only a winter cargo which was much smaller than a full summer cargo.

Held, that the charterers had failed to load a full and complete cargo within the meaning of the charter-party, and that the shipowners were entitled, in addition to

damages for detention under the provision relating to demurrage, to recover dead freight.

Decision of Greer, J., 1926, 2 K.B. 83, affirmed.—ACTIESELSKABET REIDAR *v.* ARCOS LTD., *C.A.*, 928.

5. *Collision—Loss—Dual Culpability—Damages not caused by Collision—Maritime Conventions Act*, 1911, 1 & 2 *Geo.* 5, *c.* 57, *s.* 1.—The operation of the Maritime Conventions Act, 1911, 1 & 2 Geo. 5, c. 57, s. 1, which deals with damage or loss caused by the fault of two or more vessels, is not confined to cases of collision, but applies where damage was caused partly by wash and partly by bad mooring.

The Cairnbahn, 1914, P. 25, applied.

Action for Damage.—THE BATAVIER III, *Hill, J.*, 75.

6. *Collision in Bristol Channel—Foreign-owned Vessel—Action* in personam—*British Territorial Waters—Jurisdiction—Service of Notice of Writ out of Jurisdiction.*—A tort committed by collision between ships in that part of the Bristol Channel which is twenty miles wide is a tort committed "within the jurisdiction" and leave can be granted pursuant to s. 22 (1) (*a*) (iii) (iv) of the Supreme Court of Judicature (Consolidation) Act, 1925, to serve a notice of the writ in the action for tort out of the jurisdiction.

Harris v. *Owners of* "*Franconia*," 1877, 2 C.P.D. 173, followed.

Such a place is a bay, gulf or estuary *inter fauces terræ* within the decision in *The Queen* v. *Keyn*, 1876, 2 Ex. D. 63.

The decision in *Cunningham's Case*, 1859, *Bell's Crown Cases*, 72 and 86, applied.—"THE FAGERNES," *P.D.* 859; 1926, P. 185.

7. *Discovery—Privileged Documents—Reports of Ship's Officers as to Loss of Cargo—Affidavit Alleging Privilege—Form of—Goods stated.*—An affidavit to protect a party from discovery should contain the grounds of the alleged privilege so framed that the party who has stated them on oath will expose himself to the proper penalties if the grounds are untruly stated.

The privilege which exists for communications with solicitors, and the rule governing that privilege seems to have no application to a communication between a principal and his agent in the matter of the agency giving information on facts and circumstances of a transaction which becomes the subject-matter of litigation.

Reports of ships' officers as to loss of cargo procured for the purpose of taking professional advice thereon are not privileged in an action against the persons obtaining such reports for damages for short delivery.

Anderson v. *The Bank of British Columbia*, 1876, 2 Ch. D. 644, applied.

The Hopper, No. 13, 1925, P. 52, distinguished.—"THE CITY OF BARODA," *P.D.*, 1044.

8. *Motion to set aside Writ* in Rem—Lis Alibi Pendens—*Bail—Action in America discontinued after Writ issued here.*—The Court of Admiralty in this country will set aside a writ and stay all proceedings in an action *in rem* against a ship where proceedings had already been commenced against her in another country, and she had actually been arrested there but subsequently released on bail, and the discontinuance of those foreign proceedings will not cure the unfairness and want of good faith in issuing the writ here.

The Christiansborg, 1885, 10 P.D., 141, applied.—"THE GOLAA," *P.D.* 776; 1926, P. 103.

9. *Repairs—Dockowners—Damage to Ship by Fire in Dock—Ship under Repair—Liability, Limitation of—Merchant Shipping (Liability of Shipowners and Others) Act*, 1900, 63 & 64 *Vict.*, *c.* 32, *s.* 2.—Where a ship was damaged by fire while undergoing repairs in a dry dock belonging to the repairers, such repairers were held not entitled to limit their liability under s. 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, 63 & 64 Vict., c. 32, on the ground that the work was being done by them as dockowners.

"*The City of Edinburgh*," 1921, P. 70, applied.—THE "RUAPEHU," *P.D.* 652; 1927, P. 54.

And see Marine Insurance.

SUCCESSION DUTY:—

Leasehold Property let at Ground Rents—Leases falling in—Receipt of Rack Rents—Calculation of Increased Values—Succession Duty Act, 1853, 16 & 17 *Vict.*, *c.* 51, *ss.* 20, 21 *and* 45.—By s. 20 of the Succession Duty Act, 1853: "The duty imposed by this Act shall be paid at the time when the successor . . . shall become entitled in possession to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon the determination of such charge, estate, or interest, shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination . . ."

Where a person becomes entitled to leasehold property let at ground rents, and the leases fall in during his succession, the calculation of the increased values of the leases for the purposes of succession duty is to be based on the rack rents and for the time they will be received, and not upon the anticipated value of the rack rents made at the time the successor comes into possession of the ground rents.—ATT.-GEN. *v.* DUKE OF BEDFORD, *K.B.D.* 465; 1926, 2 *K.B.* 184.

SUPER TAX.—See Income Tax.

TRUSTEE:—

Settlement—Retiring Trustee—Public Trustee—Appointment of—Prohibition Order sought—Public Trustee Act, 1906, 6 *Edw.* 7, *c.* 55, *s.* 5, *s-s.* (4).—An injunction restraining trustees from appointing the Public Trustee in their place will not be granted unless the court decides that it is expedient in the interests of all the beneficiaries that the trustees should be restrained from appointing the Public Trustee.

In re Hope Johnstone's Settlement Trusts, 1909, 25 T.L.R. 369, commented upon.—*Re* DRAKE'S SETTLEMENT, *Romer, J.*, 621.

VENDOR AND PURCHASER:—

1. *Contract—Underlease—Open Contract for Tenancy—No Notice of Unusual Covenants in Head Lease—Lease containing Special Restrictions—Implication of Usual Covenants only—Breach—Damages.*—On an open contract for an underlease the underlessee is entitled to a term subject to the usual covenants and is not compellable to take a term subject to all the covenants in the head lease.

Dictum of Sir John Leach, M.R., in *Propert* v. *Parker*, 1832, 3 My. & K. 281, approved.

Hyde v. *Warden*, 1877, 3 Ex. D. 72, and *Reeve* v. *Berridge*, 1888, 20 Q.B.D. 523, followed.

It is the duty of a vendor to disclose all that is necessary to protect himself and the onus is not on the purchaser to demand inspection.—MELZAK *v.* LILIENFELD, *Tomlin, J.*, 487; 1926, 1 Ch. 480.

2. *Land—Contract for Sale of—Agent Buying as Principal—Enforceability of Contract by Principal—Misrepresentation—Non-disclosure of Principal—Where Personal Qualification of Purchaser Not Material—Purchaser an Undischarged Bankrupt—Insolvent Purchaser's Covenants—Worthlessness of—Defence to Claim for Specific Performance—Equity—Trivial Breach of Contract—Bankruptcy Act*, 1914, 4 & 5 *Geo.* 5, *c.* 59, *s.* 47.—Mere non-disclosure as to the person actually entitled to the benefit of a contract for the sale of real estate, where no personl qualification forms a material ingredient thereof, does not amount to misrepresentation, even though the contracting agent knew that if the disclosure were made the other contracting party would not enter into the contract.

Archer v. *Stone*, 1898, 78 L.T. 34, and *Nash* v. *Dix*, 1898, 78 L.T. 445, distinguished.

An undischarged bankrupt can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene and claim it.

Franklin v. *Lord Brownlow*, 1808, 14 Vesey 550, distinguished.—DYSTER *v.* RANDELL & SONS, *Lawrence, J.*, 797; 1926, 1 Ch. 932.

3. *Practice—Contract—Action for Specific Performance—Conveyance already Executed by Both Parties—Default of Appearance by Purchaser—Order.*—The court will order specific performance of a contract at the instance of the vendor in an action where there has been default of appearance by the purchaser, even though the conveyance has already been executed by both parties before action brought.

Baker v. *Williams*, 1893, W.N. 14, applied.—CHATT *v.* CHATT, *Lawrence, J.*, 465.

4. *Restrictive Covenant — Purchaser Debarred from "Trading" Outside Certain Limits—Keeping Sub-Post Office not "Trading."*—The keeping of a sub-post office is not "trading"; the sub-postmaster being a servant of the Postmaster-General at a fixed remuneration, and with carefully defined duties.—FRAMPTON *v.* GILLISON, *C.A.*, 965.

5. *Sale of Land—Beneficial Owner—Implied Covenants for Title—Qualification of Covenant—Right of Way asserted by Public—Dedication—Onus of Proof—Tithe Maps not Evidence of Existence of Right.*—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of the last purchase for value by those through whom the vendor claimed. The plaintiff produced two tithe maps, made respectively in 1802 and 1840, in neither of which was the right of way marked.

Held, that the tithe maps were made for a special purpose, and not for the purpose of showing public or private rights other than as regards tithe; they were not therefore *prima facie* evidence enabling the plaintiff to contend that the dedication was at a subsequent date, so as to shift upon the defendant the onus of proving that the dedication was prior to 1782.

Decision of Romer, J., reversed.—STONEY *v.* EASTBOURNE R.D.C., *C.A.* 690.

6. *Sale of Land—Refusal by Vendor to take Steps to make a good Title—Step an Application to the Court for an Order—"Unwillingness"—Notice by Vendor to Rescind—Void Notice—Vendor bound to Apply to Court.*—The conditions entitling the vendor to rescind if he is "unwilling" to remove an objection of the purchaser, does not entitle the vendor to act arbitrarily and unreasonably, and a vendor tenant for life, cannot, under such a condition, refuse to apply to the court for the appointment of trustees for the purpose of the Settled Land Acts, to receive the purchase-moneys, and any attempted rescinding of the contract on his part in such a case will be declared by the court to be void.—*Re* DES REAUX AND SETCHFIELD'S CONTRACT, *Romer, J.*, 137; 1926, 1 Ch. 178.

WILL:—

1. *Accumulations—Gift to Children of Annuitant—Annuitant past Child-bearing—Closing of Class—No Legal Presumption—No Right to stop the Accumulations.*—In determining rights in law the court is not entitled to enquire into the capacity of any person to bear children, and accordingly a class of children cannot be treated for the purpose of dealing with an estate as incapable of increase on the footing that their mother is past child-bearing.—*Re* DELOITTE; GRIFFITHS *v.* GOSLING, *Tomlin, J.*, 161; 1926, 1 Ch. 56.

2. *Construction—Appointment of Trustees—To be Trustees for the Purposes of the Settled Land Acts, 1882-1890—Annuities—Residuary Estate in Trust to A for Life and after his Death in Trust for his Sons who should attain Twenty-one—Direction to set aside Sufficient Residue to Provide for Annuities—Death of A, leaving three Sons, One of whom had attained Twenty-one—Part of Residuary Estate appropriated to provide for Annuities—Whether Real Estate appropriated or unappropriated is Settled Land for the Purposes of the Settled Land Act, 1925—Trustees of Will exercising Powers of a Tenant for Life—Settled Land Act, 1925, 15 Geo. 5, c. 18, s. 1, s-s. 1 (iii) (v); s. 19, s-s. 1; s. 20, s-s. 1 (ii); s. 23, s-s. 1 (a) (b); s. 117, s-s. 1 (ix).*—Land which is the subject matter of a settlement of such a character that it remains a settlement within s. 1, s-s. 1, of the Settled Land Act, 1925, can remain settled land, although ultimately such estate may come into being which is an estate in an undivided share only. A will made in 1902, appointing trustees for the purposes of the Settled Land Acts, 1882 to 1890, and creating annuities and devising and bequeathing residuary estate in trust for A for life, and afterwards for such of his sons who shall attain twenty-one years, and directing sufficient residuary estate to be set aside to provide for the annuities to the exoneration of the rest, operates as a settlement under the Settled Land Act, 1925, and the trustees thereof can exercise the powers of a tenant for life under the said settlement created by the will.—*Re* BIRD; WATSON *v.* NUNES, *Clauson, J.*, 1139.

3. *Construction—"By any Deed or Document Anticipate Charge Assign or otherwise dispose of"—Forfeiture—To take place "upon the Execution of any such Charge or Assignment"—Petition in Bankruptcy by Tenant for Life.*—A tenant for life who files his own petition in bankruptcy does not "by any deed or document anticipate, charge or assign or otherwise dispose of" his life interest so as to work a forfeiture of such life interest,

In re Colgrave, 1903, 2 Ch. 705, doubted and distinguished.—*Re* GRIFFITHS; JONES *v.* JENKINS, *Romer, J.*, 735; 1926, 1 Ch. 1007.

4. *Construction—Defeasible Interest—Divesting—Defeat of Prior Bequest—Ineffectual Gift over.*—Where a trust fund under a will was held in trust for A provided that if he should die without having any issue living at his death the fund should be held in trust for B if he should attain the age of twenty-one years or marry under that age, and B in fact died under twenty-one and unmarried,

It was held that A was not indefeasibly entitled, but in the event of his death without leaving issue living at his death the trust fund would go to the statutory next of kin of the testatrix at the date of her death.

Doe v. *Eyre*, 1848, 5 C.B. 713, followed.

Jones v. *Davies*, 1880, 28 W.R. 455 and *Eaton* v. *Barker*, 1845, 2 Coll. 124, distinguished.—*Re* BOLD; BANKES *v.* HARTLAND, *Lawrence, J.*, 526.

5. *Construction—Income to be paid to E.H. "until She shall take the Veil"—Words of Futurity—Reference of Words of Limitation to Occurrence of Event after Execution of Will.*—Where a testator left a share of income to his niece during her life, or "until she shall take the veil" and the niece had entered a convent with a view to taking the veil, and had informed the testator of that fact before he made his will, and she in fact took the veil seven years before the testator's death, it was held that she had never qualified as a beneficiary under the testator's will because the bar against her becoming one took place before the death of the testator.

In re Chapman, 1904, 1 Ch. 431, and 1905, A.C. 106, distinguished.—*Re* HEWITT, *Lawrence, J.*, 607.

6. *Construction—Meaning of "Uterine" Brothers and Sisters.*—A gift to "uterine" brothers and sisters is a gift to brothers and sisters by the same mother but by a different father.—*Re* VINCENT, *Clauson, J.*, 1220.

7. *Construction—Real Estate Strictly Settled—Name and Arms Clause—Forfeiture on Refusal or Neglect to Take Name and Arms of Testator within Three Months—Ignorance of the Provisions and of the Existence of the Will—Failure to Comply with the Condition—Effect.*—A beneficiary under a will does not "refuse or neglect" to take the name and arms of the testator within the period of time limited by his will if he was ignorant of the existence of the will till after such period of time had elapsed. The words "refuse or neglect" apply to cases where the person has present to his mind the question whether he will or will not comply with the condition.

Hawkes v. *Baldwin*, 1838, 9 Sim. 355, explained.

Partridge v. *Partridge*, 1894, 1 Ch. 351, and *In re Edwards*, 1910, 1 Ch. 541, applied.—*Re* QUINTIN DICK, *Romer, J.*, 876.

8. *Construction—Specific Legacy—Ademption—Bequest of "My Piano"—Wills Act, 1837, s. 24.*—Where a testatrix had at the time of making her will a piano which she subsequently sold for a small sum to the husband of the lady to whom she had bequeathed "my piano" and bought a more expensive one:

Held, that the new piano which the testatrix had bought did not pass under her bequest of "my piano."

In re Clifford, 1912, 1 Ch. 29, followed.

Goodlad v. *Burnett*, 1855, 1 K. & J. 341, distinguished.—*Re* SYKES; MASON *v.* CROSSLEY, *Clauson, J.*, 1197.

9. *Construction—Vested or Contingent Gift—Gift to Eldest Son living at Testator's Death—Absolutely upon Attaining the Age of Twenty-one Years—Power to Apply Income in Maintenance—Gift Contingent on Attaining Full Age.*—A testator gave certain estates to trustees upon trust to permit his widow to reside in a house, part thereof, and subject thereto for the eldest of his sons who should be living at the time of his death absolutely upon his attaining the age of twenty-one years. There was a power given to the trustees to apply the whole or any part of the income upon the maintenance and advancement of any infant entitled or contingently entitled, and to accumulate the balance. At the testator's death, there was one infant son surviving him.

Held, that the gift was not vested, but contingent upon the infant attaining the age of twenty-one years.—*Re* BLACKWELL, *C.A.*, 366; 1926, 1 Ch. 223.

10. *Life Interest in Trust Fund—Provision Against Alienation—Bankruptcy of Tenant for Life—Discharge—Conditions of Payment to Official Receiver—Liability not Discharged—Income of Trust Fund—Destination while Liability Continues.*—The discharge from bankruptcy of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not

have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.

Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bankruptcy.—*Re* CLARK; CLARK *v.* CLARK, *Tomlin, J.*, 344; 1926, 1 Ch. 833.

11. *Name and Arms Clause in Will—Surname—Different Arms used by Persons having the same Surname.*—It is not a compliance with a "name and arms clause" to bear a double or composite surname, one part of which is in fact the surname referred to in the "name and arms clause."

The obligation to assume arms is not satisfied by a *de facto* user but only by obtaining a Royal Licence to bear the surname and arms followed by a grant and exemplification of arms from the College of Arms.

The obligation to bear a particular coat of arms is not satisfied by obtaining from the College of Arms a grant of arms resembling that coat.—*Re* BERENS, *Russell, J.*, 405; 1926, 1 Ch. 596.

12. *Residue of Residue—Aliquot Shares—Lapse of Shares—Intestacy as to Lapsed Shares—Partial Intestacy.*—A testator left his property on trust for sale and realisation, and thereafter gave and bequeathed one tenth part to A, two tenth parts to C's children, and the rest in tenth and twentieth parts to specific objects in a similar manner, and "to K £30, to L £40, to Nonconformist Ministers of Diss the residue in equal shares."

Held, that the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth charged with the two sums as therein provided to be divided among the ministers, and that there was an intestacy as to the undivided aliquot shares of persons who predeceased the testator.

Easum v. *Appleford*, 1840, 5 My. & Cr. 56, applied. Originating summons.—*Re* WHITROD; BURROWS *v.* BAX, *Romer, J.*, 209; 1926, 1 Ch. 118.

13. *Trust to Maintain House and Contents—Imperative—Validity—Remoteness.*—The perpetuity rule is concerned with the creation and vesting of interests, not with their duration. If the interest must necessarily occur, and be vested within the period, its duration beyond the period does not infringe the rule.

Kennedy v. *Kennedy*, 1914, A.C. 215, distinguished.—*Re* CASSEL; PUBLIC TRUSTEE *v.* MOUNTBATTEN, *Russell, J.*, 504; 1926, 1 Ch. 358.

WORKMEN'S COMPENSATION:—

1. *Accident arising in the course of Employment—Workman going to Work in Specially Provided Train—Workmen's Compensation Act*, 1906, *s.* 1.—A workman going to his work at a colliery was injured whilst crossing the line to get to the platform from which the men employed at the colliery were conveyed to their work by a train specially provided for the purpose by the company.

Held, that there being no obligation on the workman to use the train, the injury did not arise in the course of his employment, and therefore he could not recover compensation under the Act.—NEWTON *v.* GUEST, KEEN AND NETTLEFOLDS, LTD., *H.L.* 689.

2. *Accident to Workman in Train conveying him to Work—Train belonging to Employers—Commencement of Employment—Workman in Train only by Reason of Employment—Right to Compensation.*—Where a workman is injured by an accident while being conveyed to his work in a train which is actually the property of his employers, and in which he has no right to be except by virtue of his employment, the employment may be deemed to have commenced and the workman be entitled to compensation, notwithstanding that the use of the train by the workman was not obligatory.

Principles laid down in *Stewart & Son* v. *Longhurst*, 61 SOL. J. 414; 1917, A.C. 249; affirming *Longhurst* v. *Stewart & Son*, 61 SOL. J. 9; 1916, 2 K.B. 803 followed; *Newton* v. *Guest, Keen & Nettlefolds*, 133 L.T. 26, and *St. Helens Colliery Co.* v. *Hewitson*, 68 SOL. J. 163; 1924, A.C. 59 (where the train was not the property of the employers), distinguished.—HOWELLS *v.* POWELL DUFFRYN STEAM COLLIERY CO., *C.A.* 184; 1926, 1 K.B. 472.

3. *Death by Accident—Arising out of and in the course of the Employment—Breach of Regulation—Act done within Scope of Workman's Employment—Workmen's Compensation Act*, 1906, 6 *Edw.* 7, *c.* 58, *s.* 1—*Workmen's Compensation Act*, 1923, 13 & 14 *Geo.* 5, *c.* 42, *s.* 7.—A workman was employed to go about to different offices in Liverpool to weigh cotton, and it was within the scope of his employment to travel on a tramcar. He met with an accident in trying to jump on a tramcar which had just started to move. He fell and was killed. His widow claimed compensation. A regulation of the tramway authority forbade passengers attempting to board tramcars while in motion. The county court judge held that, as the deceased was acting contrary to the regulation, he was acting outside the scope of his employment and his widow was not entitled to compensation.

Held, that there must be a new trial. Once it was conceded that it was within the scope of the deceased's employment to use a tramcar in the course of doing his employer's business, the mere fact that he attempted to board a tramcar which had just started and could just be said to be in motion did not take the case outside the Acts.

Wilsons and Clyde Coal Company Limited v. *McFerrin; Kerr or McAulay and Another* v. *James Dunlop & Co. Limited*, 42 T.L.R. 397, followed.—GUEST *v.* GASTON & CO., *C.A.* 667.

4. *Dependant—Member of a Family—Wife's Illegitimate Children—Workmen's Compensation Act*, 1906, *s.* 13—*Workmen's Compensation Act*, 1923, *s.* 2.—The appellant had two illegitimate children by another man before she married her husband. Her husband was killed by an accident entitling her to compensation, which was paid. She now claimed compensation on behalf of her two illegitimate children.

Held, dismissing the appeal, that the children were neither dependants of the deceased workman nor members of his family.—SCOTT *v.* LONDON & NORTH EASTERN RLY., *H.L.* 1160.

5. *Incapacity—Partial Recovery—Notice by Employer—Counter-notice by Workman—Reference of Medical Referee—No Power to Re-open Matter.*—Where an employer, in pursuance of s. 14 of the Workmen's Compensation Act, 1923, serves upon the workman a copy of the certificate of his medical adviser to the effect that the workman has wholly or partially recovered, together with a notice that he intends to end or diminish the weekly payment, and the workman within ten days sends to the employer a medical report disagreeing with the employer's, and the matter is ultimately referred to and decided by the medical referee, the report of the latter, subject to its interpretation by the registrar, finally concludes the matter, and there is no power for the workman to re-open it by starting new proceedings for arbitration to obtain an award.

Pudney v. *France Fenwick & Co.*, 1925, 1 K.B. 346, distinguished.—RHODES *v.* DIGBY COLLIERY, *C.A.*, 796.

6. *Incapacity—Recovery—Continuance of Weekly Payments after Recovery—Workmen's Compensation Act*, 1923, *s.* 14.—An employer who is paying compensation to a workman is not bound to continue the weekly payments up to the date of an award releasing him therefrom, if the workman has completely recovered at an earlier date.—OCEAN COAL CO. *v.* DAVIES, *H.L.* 1219.

7. *Injury by Accident—Injury by Dog—Award against Employer—Claim for Indemnity against Owner of Dog—Third Party Claim—Well-behaved Dog—Owner not Liable—Workmen's Compensation Act*, 1906, 6 *Edw.* 7, *c.* 38, *s.* 6.—A waitress employed by the respondent was injured by accident arising out of, and in the course of, her employment. The accident was caused by the waitress colliding with the appellant's dog on the stairs of the premises where she was employed. The dog was a well-behaved dog, and had no vice of any kind. The waitress claimed compensation from the respondent, her employer, and the respondent joined the appellant, the owner of the dog, as a third party and claimed an indemnity from him. The county court judge held that the appellant was liable to indemnify the employer.

Held, that the dog being a well-behaved dog without any vice of any kind, its owner was not liable, and the appeal must be allowed.—HINES *v.* TOUSLEY, *C.A.*, 732.

8. *Partial Incapacity—Light Work provided by Employer—Cesser of Employment owing to Strike—Right to Compensation.*—Where an injured workman has been given light work by his employers in lieu of compensation, the right to compensation revives upon the loss of that light work by reason of a strike, provided that the workman is himself willing to work. The fact that his comrades have struck does not disentitle him to claim payment of the compensation to which he has already a right.—HAMILTON *v.* SHELTON IRON, STEEL & COAL CO., *C.A.* 1241.

9. *Practice—Appeals to Court of Appeal—Obtaining and filing of County Court Judge's Notes—Not Condition precedent*

to Entering Appeal.—In Workmen's Compensation practice, a party to an arbitration in the county court who wishes to appeal to the Court of Appeal should obtain a signed copy of the judge's notes for filing. He can, however, enter the appeal first and obtain the notes afterwards, and should do so where to wait for the notes would entail the notice of appeal not being given in time.—ASTON COAL CO. *v.* STANCIL, *C.A.*, 1181.

10. *Review of Weekly Payments—Workman under Twenty-one at date of Accident—Right to Review—Application for Review more than Twelve Months after Accident—Applicant over Twenty-one at date of Application for Review—Jurisdiction—Workmen's Compensation Act*, 1906, 6 *Edw.* 7, *c.* 58, *Sched.* 1 (16)—*Workmen's Compensation Act*, 1923, 13 & 14 *Geo.* 5, *c.* 42, *s.* 24, *s-s.* (6).—By the operation of the proviso substituted by s. 24, s-s. (6), of the Workmen's Compensation Act of 1923, for the proviso to para. 16 of the 1st Schedule to the Act of 1906, a workman who meets with an accident while under twenty-one years of age, and is and remains totally incapacitated, is not entitled after he has attained the age of twenty-one years, to apply for a review of weekly payments.—JONES *v.* MEIROS COLLIERIES, *C.A.*, 707.

11. *Workmen's Compensation Act*, 1923—*Accident before and Death after the Act—Compensation to Dependants—Deduction of Sums paid by way of Weekly Compensation.*—An employer is not prevented by s. 24 (2) of the Workmen's Compensation Act, 1923, from deducting from the amount claimed by the dependants of a deceased workman, who was injured before 1st January, 1924, but died after that date, the sums paid to the workman during his life by way of weekly compensation.—CLEMENT *v.* DAVIS & SONS, *H.L.*, 1240.

WAR :—

Treaty of Peace Order, 1919—*Charge on Property of German Nationals—Shares in Company—Company registered in England—Carrying on business wholly in Holland—Liability to Charge.*—A German national, resident in Germany, was, at the time when the Treaty of Peace Order, 1919, came into force, beneficial owner of certain shares in a trading company which was registered in England, but carried on business wholly in Holland.

Held, that the shares were "property within His Majesty's Dominions," and were subject to the charge created by the Order.—BAELZ *v.* PUBLIC TRUSTEE, *Eve, J.*, 818; 1926, 1 Ch. 863.

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